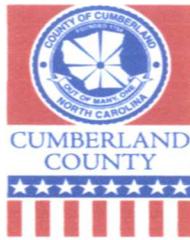


Members:
George Quigley, Chairman
John R. Swanson, Vice
Chairman
Joseph M. Dykes
Horace Humphrey
Melree Hubbard Tart



Alternates:
Martin J. Locklear
Randy Newsome
William L. Tally
Carrie Tyson-Autry

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

**TENTATIVE AGENDA
SEPTEMBER 16, 2010
7:00 PM**

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, September 16, 2010, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE AUGUST 19, 2010 MINUTES
4. ABSTENTIONS BY BOARD MEMBERS
5. PUBLIC HEARING DEFERRALS
6. BOARD MEMBER DISCLOSURES
7. POLICY STATEMENT REGARDING APPEAL PROCESS
8. PUBLIC HEARING(S):

P10-13-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A COMMUNITY CENTER IN AN RR RURAL RESIDENTIAL DISTRICT ON .95+/- ACRES, LOCATED AT 7108 ORA COURT, SUBMITTED BY LEON REVELS JR. ON BEHALF OF LUMBEE TRIBE OF NORTH CAROLINA (OWNER).
9. DISCUSSION
10. UPDATE(S)
11. ADJOURNMENT

Members:

George Quigley, Chairman
John R. Swanson, Vice-Chair
Joseph Dykes
Horace Humphrey
Melree Hubbard Tart



Alternates:

Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry

Cumberland County Board of Adjustment

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7603

MINUTES
AUGUST 19, 2010
7:00 P.M.

Members Present

George Quigley, Chair
Joseph Dykes
Melree Hubbard Tart
Horace Humphrey
Carrie Tyson-Autry

Absent Members

John Swanson (excused)

Staff/Others Present

Thomas Lloyd
Patricia Speicher
Pier Varner
Melodie Robinson
Harvey Raynor (Deputy
County Attorney)

Chair Quigley called the meeting to order at 7:00 p.m. in Public Hearing Room # 3 of the Historic Courthouse.

1. ROLL CALL

Mrs. Varner called the roll and stated a quorum was present.

2. ADJUSTMENTS TO THE AGENDA

There were none.

3. APPROVAL OF THE JULY 15, 2010 MINUTES

A motion was made by Mr. Humphrey and seconded by Mrs. Tart to approve the minutes as submitted. The motion passed unanimously.

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

There were none.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

CHAIR QUIGLEY: Thank you very much. We will have public hearing tonight and I want to remind you that this is a Quasi-Judicial hearing which means that if you testify before this Board, it will be sworn testimony. Should you have to be recalled to testify, you will remain under oath when you're giving whatever testimony or evidence you want to give. Would you publish the first case please?

8. PUBLIC HEARING(S)

Opened Public Hearing

- **P10-11-C**: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW THE EXPANSION OF A BORROW SOURCE OPERATION IN A M(P) PLANNED INDUSTRIAL DISTRICT ON A 34.68 +/- ACRE PORTION OF A 79.5 +/- ACRE TRACT, LOCATED ON THE WEST SIDE OF DOC BENNETT ROAD (SR 2212), NORTH OF I-95; SUBMITTED BY VIRGINIA CORBETT CARROLL (OWNER) AND JERALD F. MCDONALD.

MRS. VARNER: Mr. Chairman, I would like to make a remark that on June 19, 2008, a Special Use Permit was being approved on the subject property for Phase I. The following presentation is a proposed request for a Special Use Permit for Phase II.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: Does any member of the Board have questions for the staff?

MR. HUMPHREY: You say the first operation was approved in 2008?

MRS. VARNER: June 19, 2008.

MR. HUMPHREY: Thank you.

CHAIR QUIGLEY: I do have a sheet indicating no one is here to speak in favor of this request for Special Use Permit. I do have one person signed to speak in opposition to the Special Use Permit. Mr. Norton, are you present? Would you please come forward?

Chair Quigley swore in Daniel Norton.

MR. NORTON: My name is Daniel Norton, I live at 3678 Doc Bennett Rd, right beside the location there.

CHAIR QUIGLEY: Can you point out on the map exactly where your property is?

Mr. Norton indicated on the map using the laser pointer where his property is located.

MR. NORTON: I guess my question is they cleared off all of this land at one time and dug it down and since they have dug this here, this has grown back up so roughly you've got little trees out here about 6-10 ft. tall. So when they go back to clear all this off, there's going to be a big pile of brush. I have a question, where are they going to put that? I ask that they don't put it along the road near this area here because I have trees here and if it was to catch on fire it would be a bad problem. When they cleared this off over here, they got a pile here that is almost 35-40 feet tall and they're clearing out three times the amount now than before. I'm asking that when they clear this that they do not pile the brush there. Depending on how much they clear out, will they maintain a fire break in here also? My property comes into here and cuts a small section out, but this property back here belongs to my neighbor and I imagine they would like to have the same thing done along there too. Also, since they have put this in here, the noise level of four wheelers and gun fire on the weekends has been introduced into the area. However, the Sheriff's Department does a pretty good job of going out there when you call them, but there's never anybody out there when they get there. I don't know if it's in their pit here because they have a tremendous big hole there, but Autry Grady has one over here and there is a big pit over there and there's people in there too. That's what I'm asking, if they would not pile the brush up along here and to maintain a fire break?

CHAIR QUIGLEY: Thank you. Let me ask while you're still there a question for staff? Could we put a condition in the Special Use Permit that they would have to clear the brush from the site?

MS. SPEICHER: If we consider that condition, the best avenue to take would be to include that in your motion but also include that if the applicant disagrees with that, we bring the case back.

CHAIR QUIGLEY: Thank you.

MR. NORTON: I have no problem with them leaving the debris, taking it up...if they could move it over here somewhere, not necessarily removing it from the sight, but just not putting it over here. (He is pointing to the locations on the presentation). I thank you.

CHAIR QUIGLEY: Anyone else to introduce information relevant to the Special Use Permit. We're just going to recess the hearing for a moment so I can talk to the Board.

CHAIR QUIGLEY: We're back in session.

MR. HUMPHREY: Mr. Chairman, I offer a motion that we approve the Special Use Permit on Case P10-11-C with the conditions as stated and based on these items:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

There is no material danger to the public health or safety and that this is already in operation, this is just an expansion.

2. The use meets all required conditions and specifications;

I think with the conditions set aside it will meet all the required conditions and specifications for the Special Use Permit.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity;

It will be maintaining the same operation that is already in operation, it is just an expansion, so it will be nothing new.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan.

It will not change the location, so I think all the conditions as listed in the fact sheet will be met and, I think we can offer a motion to approve it with any special condition that you might want to add.

CHAIR QUIGLEY: Could you add a condition that we require them to position the vegetative debris in such a way as to not impede the neighbors' property?

MR. HUMPHREY: I will also move that we add those exact wordings.

CHAIR QUIGLEY: Do I have a second?

MR. DYKES: Seconded the motion.

CHAIR QUIGLEY: It has been properly moved and seconded that we grant the Special Use Permit with the additional condition that they position the debris so that it doesn't impede the neighbors' property lines. Is there any other discussion?

CHAIR QUIGLEY: All in favor, signify by saying aye. Any opposed?

Quigley:	Yes
Tart:	Yes
Dykes:	Yes
Humphrey:	Yes
Autry:	Yes

CHAIR QUIGLEY: The Special Use Permit is granted.

The motion was approved unanimously.

- **P10-12-C:** CONSIDERATION OF AN APPEAL SUBMITTED UNDER ARTICLE XVI SECTION 1604, ADMINISTRATIVE REVIEW WITH THE BASIS OF THE APPEAL CONCERNING ARTICLE II, SECTION 303, ARTICLE IV SECTION 403 ("SCHOOL, BUSINESS AND COMMERCIAL FOR NURSES OR OTHER MEDICALLY ORIENTED PROFESSIONS, TRADE, VOCATIONAL & FINE ARTS;" "SCHOOLS, PUBLIC, PRIVATE, ELEMENTARY OR SECONDARY"), ARTICLE IX SECTION 916 AND ARTICLE XVI AS APPLIED TO THE TIGERSWAN TRAINING COLLABORATION CENTER; SUBMITTED BY JULIA KATHERINE FAIRCLOTH, RAEFORD B. LOCKAMY II, SAMUEL D. AND DORIS M. FORT.

Ms. Speicher presented the zoning, land use and photos of the site to the Board.

MS. SPEICHER: On the screen you see the subject property and in the hatch pattern in the center. This is the center of the appeal or the basis of the appeal. Surrounding land uses. We have Quarterside Farm which I understand is a produce stand shown as Item #1. Number 2 is OK Farm, which my understanding is a hog farm. Then we have residential in the area shown by yellow along with two doublewide manufactured homes. This is the aerial view of the subject property outlined in blue. Hydric soils are on the site. This is the site plan that was approved by this Staff on June 10, 2010, subject to the conditions of approval. This is an enlargement of the site plan. You'll see seven classroom buildings in the lower portion of your screen. There are five ranges here and three pistol ranges here. There are several other buildings, a Pro shop, incidental structures on the same site. Photos of the site, this is actually at the entrance where the Class C private street to serve TigerSwan site. This is the actual subject property. You'll see on this aerial photo we have the three petitioners Mr. & Mrs. Fort, Ms. Faircloth, Mr. Mulier and Mr. Lockamy's property shown on the slide.

CHAIR QUIGLEY: Talk to that again Ms. Speicher.

MS. SPEICHER: The TigerSwan site is outlined in blue or teal color. Then you have Mr. & Mrs. Forts' property, the Faircloth/Mulier property and the Lockamy property. Those are the three petitioners that signed the application for this appeal along with the parcel numbers that they themselves included in the application. You have a complete copy of the entire application in your packets. This is where the actual fire ranges are (the red X). You will notice on the screen that staff, for the Board's orientation, we have put the radius as a different mile, in half mile increments, measurements. I'm available for any questions.

CHAIR QUIGLEY: Does any Board member have questions for staff?

CHAIR QUIGLEY: What we have here Board is certainly not the usual sort of case. We're weighing this appeal of a decision that was made by our County Planning Director and what we're going to be asked to do is to essentially affirm or deny the appeal, so the testimony we get has to be relevant to the parties concerned. So, I'm going to ask some questions of staff just to make sure we've got everything we want.

CHAIR QUIGLEY: Ms. Speicher, was this appeal filed in a timely manner?

MS. SPEICHER: Yes Chair, I think it would be more appropriate, even though I'm secretary to the Board, if I were sworn in along with Mr. Lloyd.

CHAIR QUIGLEY: Thank you.

Chair Quigley swore in Patricia Speicher and Thomas Lloyd.

CHAIR QUIGLEY: Was this appeal filed in a timely manner?

MS. SPEICHER: Yes Chair, it's staff's understanding that it has been.

CHAIR QUIGLEY: Thank you very much. Did the appellants have standing to bring this appeal forward?

MR. LLOYD: We have not been able to determine that at this time and there was nothing in the application to show an aggrieved party.

CHAIR QUIGLEY: I understand. I think what we have to do is establish whether or not we have standing. I understand there may be counsel representing some of the aggrieved, is that correct? Will one of the counsels come forward to be sworn in.

Chair Quigley swore in Robin Currin.

MRS. CURRIN: My name is Robin Currin, 127 W. Hargett Street, Raleigh, NC.

CHAIR QUIGLEY: Thank you very much. Which clients are you representing, Ms. Currin?

MRS. CURRIN: I represent Sam and Doris Fort. All three appellants are here and they are prepared to testify under oath as to the adverse affects this proposed use will have on their property that will establish standing.

CHAIR QUIGLEY: Thank you very much. I remind you that should you be called forward again, that you remain under oath.

MRS. CURRIN: Yes sir. Do you want to go ahead and swear in the other counsel?

CHAIR QUIGLEY: Is he going to offer evidence also?

MRS. CURRIN: He may.

Chair Quigley swore in George B. Currin.

MR. CURRIN: George Currin, same address, 127 W. Hargett Street, Raleigh, NC.

CHAIR QUIGLEY: Are you representing the same clients?

MR. CURRIN: We have a firm, Currin & Currin. The firm is representing the same clients.

CHAIR QUIGLEY: Thank you. What I'm going to do now is call the aggrieved forward to establish if they have standing in this case. Is Ms. Faircloth here? Please come forward.

Mrs. Currin approaches the podium.

CHAIR QUIGLEY: Are you representing her?

MRS. CURRIN: No, I'm not, but can I say one thing very quickly?

CHAIR QUIGLEY: Yes.

MRS. CURRIN: With respect to all of the appellants, we have a number of exhibits to submit, and three of those exhibits are sworn affidavits of each of them that relate to their standing, so it may be helpful at this time if we could go ahead and give you those so you actually have those statements with you at the time you're making that determination.

CHAIR QUIGLEY: Thank you, do so.

Mrs. Currin submits the exhibits to Ms. Speicher. [Exhibit 1]

MRS. CURRIN: Now, I have an original here which I'd like to submit to the clerk for purposes of filing and then we have a copy for each one of the board members. I know you're going to hear from each of them but just for points of reference at Tab 5 is the affidavit of each of the appellants that relates specifically to this effect. We also have a copy of this for the TigerSwan people if they would like to have a copy of these exhibits.

CHAIR QUIGLEY: Okay, with your permission, I don't think we have time to peruse that before we start receiving some testimony. Is that alright with you?

MRS. CURRIN: Yes sir, I just thought you might want to have it in front of you.

CHAIR QUIGLEY: Thank you.

CHAIR QUIGLEY: Ms. Faircloth, would you please come forward? Would you please state your name, give us your address and be so kind as to point your property out on the map.

Chair Quigley swears in Ms. Faircloth.

MRS. FAIRCLOTH: I'm Julia Katherine Faircloth, I live at 6504 NC Hwy 210 S in Stedman. On the map it's shown in red.

MS. SPEICHER: I'll point to the subject property. It's labeled Faircloth with the parcel number.

CHAIR QUIGLEY: Got it, does everyone see where that parcel is? Okay, thank you very much. Ms. Faircloth, what did you have to introduce?

MRS. FAIRCLOTH: I have several things and there are several resources that I have cited in the copies that you have, I don't want to read all of those, but I did prepare copies should you want to look at those at some point.

Ms. Faircloth handed copies of her information to Ms. Speicher to hand out to the Board members. [Exhibit 2]

MS. SPEICHER: For the record, can we have these submitted by Ms. Faircloth.

CHAIR QUIGLEY: Alright. Introduce that as evidence from Ms. Faircloth. Once again, thank you very much and once again let me say if we don't go through that now.....

MS. SPEICHER: Excuse me Chair, for the record, can we have it clarified that that was offered as evidence for Ms. Faircloth?

CHAIR QUIGLEY: I want to clarify for the record that we have received some evidence for Ms. Faircloth.

MRS. FAIRCLOTH: Would you like me to continue?

CHAIR QUIGLEY: Yes.

MRS. FAIRCLOTH: My property is only 375 feet from the property line of the proposed TigerSwan Training Collaboration Center site. My husband and I have three children and in 2004 we built our current home to be near my father's home to enjoy a quiet rural life. I grew up in the Seaford Community. I was shocked and confused by the letter I received in November 2009 inviting me to a community meeting regarding new business that was coming to our area. The invitation came in an envelope with no return address and not on company letterhead. They wanted to be good neighbors. Research indicates that TigerSwan officials had ties to Blackwater. As the weeks and months passed between the Thanksgiving arrival of this community meeting invitation and the Memorial Day submission of TigerSwan's site plan application to the County, the residents had the opportunity to see TigerSwan's advertisements and billboards around the county that read, "for those who have hunted armed men, training will never be the same - the most realistic combat training available." We're not an anti-military family; my father is a WWII veteran participating in both the European and Pacific theaters and retired from the Department of Defense after more than 30 years of service. Other family members who have served in the military; military training is a necessity, we respect and appreciate the efforts of the military. When we hear training exercises at Ft. Bragg, and we do hear them where we live, we recognize it and we have no issues with that. TigerSwan is not the U.S. military. They are a private for profit company. We do not want their realistic combat exercises in our backyard. Military training belongs on military bases, military bases were developed to isolate and contain this training from and for the safety of the general public. My family and I have significant objections to the proposed TigerSwan facility. I brought this appeal because under no reasonable interpretation of the County Zoning Ordinance or any other law can this facility be reasonably classified as a school, public, private, elementary, or secondary. The TigerSwan facility is simply not a permitted use in the A-1 district and is completely inconsistent with the uses and purposes of that district and the surrounding area. If this grave error in classification is not corrected, the damages suffered by me and my family including the decrease in our property value will be substantial and irreparable. There's no doubt in my mind that our property values will be greatly diminished by the presence of the operation that TigerSwan is currently planning and that it poses a significant threat of injury and specific and direct loss to us. Specifically those damages which are distinct from the community at large are as follows: Safety – we have a concern about stray gun fire. We're concerned it will be unsafe to walk around our property or spend time outdoors. We land owners and farmers may no longer be able to lease our land for hunting wildlife due to the risk of stray gun fire. A number of residents rely on income from hunting agreements. The conditional approval from the county says that TigerSwan is approved for all small arms. Small arms can be defined as "weapons manufactured to military specifications and designed for use by one person." Some of the distances that some small weapons ammunition can travel include: 270 bullets can travel 2 ½ - 3 ½ miles, 308 bullets can travel 2 ½ - 3 ½ miles and 300 windmags can travel up to 5 miles. According to the County Planning Department, my home is 1.9 miles from the range site, within the distance that ammunition can travel. Our property line is only 375 feet away from theirs. TigerSwan plans to fire 15 million rounds of ammunition per year. That comes from their Blackriver Design Report which Stewart Acoustical Consultants submitted to the County. We have been told that there is a one in a million chance of stray gun fire by James Reese, in response to questions about potential safety concerns. This can be interpreted that there will be some stray gun fire if firing several millions rounds per year. Noises and others concerns – we're concerned about noises and other on-going nuisances. I work from a home office during the day, our children study at night. We enjoy sitting on our back porch and spending time outdoors listening to the peace and quiet. When hunters are in the area, we hear them, it's loud and clear. We expect this noise to be ongoing when class is in

session. At a community meeting held last December, it was stated that training for military and law enforcement will be held during the week and for hunters and local enthusiasts, the site would be open on the weekends. This implies training can take place seven days a week. This will include helicopter and explosives training. Research indicates that excess noise raises stress levels of humans. Noise is a stressor and an important unrecognized pollutant of our environment. Our quality of life generally is eroded by annoyance by noise as substantial segments of the population are vulnerable to its adverse health effects. More specifically, sleep is disrupted, productivity is reduced and the education and development of children is affected by noisy environments. The Blackriver Design Report states that this appears to be a generally good site for the firing range activities with some concern for primarily the area along Hwy 210 and Doe Hill Road, north of the site, especially if there are homes in that area. However, much depends on the interpretation of the noise ordinance. Potential with the commercial limits must be met at the boundaries or residential limits must be met by Hwy 210 and firing will be at a rate of more than once per second for extended periods. TigerSwan officials told residents in a community meeting that they would notify residents if night training would occur so that they would not be startled. Notification doesn't make the noise go away. We need to be able to continue our current lifestyles and sleep when we want to, not when TigerSwan chooses. The Sheriff's department is responsible for enforcing the noise ordinance. We're not sure that they are resourced to do this effectively. We are entitled to the quiet and tranquil enjoyment of our properties and it should not be taken away needlessly. The National Rifle Association Range Manual specifically states no set distance eliminates noise entirely. We unequivocally believe that the noise generated by the proposed range will be both a private and public nuisance. The Environmental Protection Agency and OSHA Guidelines for noise levels do not take into account the disturbance of sleep and the ability to concentrate. We have a concern with lead contamination. A number of studies since the 1970's have shown the risk associated with the firing ranges. In fact, a petition was filed August 3rd of this year by a biodiversity group with the EPA to ban the use of lead bullets and shots. In a study prepared by the environmental working group from data from the EPA, the nation's firing ranges represent a major potential source of lead in water and wild life and a potential liability to nearby property owners who may find themselves living next to a hazardous waste site or who might be victims of lead drifting onto their property. Lead contained from a single bullet can contaminate the amount of water consumed daily by hundreds of thousands of people. That is, the lead contamination would exceed EPA guidelines. However, despite their significant lead pollution, outdoor firing ranges are exempt from reporting requirements of EPA's rules. Firing ranges are not regulated by the government and are not required to clean up the lead until the site is abandoned. It is well documented that lead can remain in soil and contaminate ground water. This site is in close proximity to wetlands with the sandy soil and high water table in our area and stormwater runoff, we are concerned that lead could find its way into our ground water. According to Dr. Desmond I. Bannon, the Director of Toxicology for the United States Army, in an article published in November of last year, small arms ranges represent a large burden of metal contaminated sites for Department of Defense management and research continues to focus on control and remediation of existing sites. In the same article Dr. Bannon states "risk assessment and/or remediation of small arms ranges should therefore assume a high bioavailability of lead." In the soil samples that he analyzed, bioavailability of lead was determined to be 100 %. As defined by the EPA, bioavailability is the measure of how much a contaminant is absorbed when people are exposed to that contaminant through inhalation, skin contact or food intake. Dr. Bannon also states in his article that both bovine calves have been poisoned due to grazing at the target area of small arms ranges. Lead is absorbed by vegetation. It follows then that wild life such as deer, rabbit, water fowl and bear would also be poisoned. The county's conditional approval states that the developer is encouraged to meet or exceed the EPA's best practices for lead at outdoor shooting ranges, which implies that there is no requirement to

comply with the best management practices. We believe this lead contamination will reach my property and will cause a decrease in its value. There is expected to be wildlife and farming impacts. There are bears, deer and turkeys among other wildlife in this area. Wildlife and farming operations could be impacted by noise and lead pollution. We would expect a traffic increase. Speed limits are not closely monitored along Hwy 210 and it could be difficult to get out of driveways during the start and end of regular work hours. This facility will likely result in increased traffic and the accidents that go along with that. Decreased property values due to the noise, safety and lead pollution concerns; it is likely that property values will plummet. Who would want to live next to this site? Certainly not families and with the increased traffic going into the site, it is likely that the crime rate could increase. Local realtors would require sellers to disclose their proximity to this site. There's likely a potential for TigerSwan's expansion. TigerSwan officials stated to residents that they have a ten year lease agreement with some options. They also indicated that they would be leasing about fifty acres of land. This was in December. That plan has grown to nearly 1000 acres of land associated with this business. There's potential for other unwanted businesses and activity in our community. With the interpretation of Land Use Code by County Planning and Inspections, if they believe this facility is a school and benefits the residents of the agriculturally zoned area, what else might we see approved in the future? The effect of future land use must also be considered when making a determination about the current land use. The area is zoned agricultural and County Land Use Plans dictate preserving the agricultural land use, so we must assume the future land use would be agricultural. Would you plant crops with top soil contaminated with lead? Would you build your home, a school or a child's playground atop land contaminated with lead? In my research of shooting ranges, numerous documents prove them to be very hazardous to health and the environment and a noise nuisance. I have yet to find a single document that proves firing ranges to be safe and that there should be little concern to citizens as stated by the County Planning Director and TigerSwan representatives. No document appears to exist that refutes scientifically any of the lead contaminations studies. Even the Director of Toxicology of the U.S. Army acknowledges small arms gun ranges are known to be contaminated with lead. No documents have been presented to date that shows that lead will be 100 percent contained and that noise will not be a nuisance to current land owners and occupants. Has an environmental impact statement been prepared by consulting bioengineer and presented for review and critique? Furthermore the Clean Water Act makes it unlawful for any person to discharge pollutant from any point source into water of the United States without obtaining a permit called a National Pollution Discharge Elimination Systems Permit. Several federal court cases have ruled that lead shot from fire arms is a pollutant and that discharge points are point sources. Waters of the United States include wetlands, rivers, streams, creeks, estuaries, and similar features. To the best of my knowledge no permit has been granted to TigerSwan under the Clean Water Act. Therefore, without such permit, the stated land use must not be approved. In sum my family and I will suffer severe adverse impacts resulting in the decrease in the value of my property and the diminished quality of life should this unlawful use be allowed. May I ask that the Board admit my affidavit and exhibits in the green folder as evidence?

CHAIR QUIGLEY: Are there any prohibition on introducing that?

MR. HUMPHREY: No problem.

CHAIR QUIGLEY: We don't have any problem with admitting that and we'll do so.

CHAIR QUIGLEY: Some of the accumulated information you gave us of course we can't entertain because we just don't have that latitude, it has to be substantiated by information that is documented and something that we would have available to us. The property values would

have to be substantiated by someone who knows what the property values are and whether or not they would be damaged by this particular operation. The other thing is the conditions you expressed, I'm assuming would be entertained by all of the people that live in that general part of Cumberland County, is that correct?

MRS. FAIRCLOTH: Are you asking are the concerns similar?

CHAIR QUIGLEY: Yes.

MRS. FAIRCLOTH: I have heard similar concerns from the individuals who are here with us this evening.

CHAIR QUIGLEY: The other thing is that, do you understand people generally....a concept is that people have the use of their property and how they choose to use it as long as it's not contrary to law and that's what we're establishing here. I want to thank you for your testimony and I want to remind you that you might be questioned by somebody from TigerSwan. Thank you very much.

MRS. FAIRCLOTH: Thank you.

Chair Quigley swore in Raeford B. Lockamy, II.

CHAIR QUIGLEY: Would you please state your name and address for the record?

MR. LOCKAMY: Raeford B. Lockamy, II, My address is 5509 Labrador Dr., Hope Mills, NC.

CHAIR QUIGLEY: Thank you and which property is yours, sir?

MR. LOCKAMY: Asks his brother to come to the podium to help him point out his property on the Power point presentation.

CHAIR QUIGLEY: Do you reside on that property?

MR. LOCKAMY: No sir, I reside at 5509 Labrador Dr.

CHAIR QUIGLEY: Okay, thank you.

MR. LOCKAMY: I have lived on the farm previously.

CHAIR QUIGLEY: Thank you and what's your testimony?

MR. LOCKAMY: As I said, my name is Raeford B. Lockamy, II, I live in Hope Mills, NC. My family and I have owned property that is directly adjacent to the tract of land proposed to be used by TigerSwan Training Collaboration Center that is at issue in this case, for many, many years. My property is indicated specifically on the map which is attached to the affidavit of Samuel Fort. My family and I enjoy the quiet atmosphere of our farm and frequently gather for cook outs, celebrate birthdays, relieve stress after a hectic day of work and just getting away in general. My sister has lived on our family property that is directly adjacent to the TigerSwan site since 1983. She has a stressful job and looks forward to coming home to the peaceful tranquility of our property. The solitary quiet atmosphere is necessary and crucial to the full enjoyment of our property, but this will be destroyed if the TigerSwan project is allowed to

proceed. My family and I have some significant objections to the proposed TigerSwan facility. We brought this appeal because under no reasonable interpretation the County Zoning Ordinance or any other law can this facility be reasonably classified as a school, public, private, elementary or secondary. The TigerSwan facility is simply not a permitted use in the A1 District. It is completely inconsistent with the uses and purposes of that district and the surrounding area. If this grave error and classification is not corrected; the damage suffered by me and my family, including the decrease in the value of our property, will be substantial and irreparable. There's no doubt in my mind that our property values will be greatly diminished by the presence of the operation of TigerSwan that is currently planned; that it poses a significant threat and injuries and specific direct loss to us. Specifically those damages which are distinct from the community at large are as follows: Safety – the TigerSwan facility is a military law enforcement and security personnel training facility. It will contain shooting ranges and provide instruction in training among other things firearms and other weaponry, technical marksmanship, convoy live fire, urban warfare. TigerSwan's advertising states "for those who have hunted armed men, training will never be the same." The literature also states it trains students of all skill levels from highly skilled special skills operations operators to students possessing minimum or no skills with fire arms. This means in addition to soldiers and law enforcement officer, people who have never shot a gun in their life will be receiving training at the facility and doing so for the first time. The site acres is described as 978.4 acres, therefore the training operations can expand an incredibly large area in addition to actual shooting ranges. There's nothing in the site plan or otherwise that limits on the property where gunfire can occur thus training to hunt armed men can cover 978.4 acres which brings it dangerously close and in fact potentially directly adjacent to our property. The site plan reminds but does not require that all levels of small fire arms, 9mm, 45 caliber, 5.56 mm, 7.62 mm will be used or provided on site. Additional ammunitions can be added by a single request to the Sheriff's Department. This includes revolvers, pistols, submachine rifles, assault rifles, sniper rifles and hand grenades. Using these weapons in the vicinity of the homes and farms is clearly a safety risk and subjects me and my family to danger. I do not understand why this military facility is not being set up on Ft. Bragg where they have large amounts of land already used for this purpose and where it can be regulated and overseen by the military. In sum, the TigerSwan facility's main purpose is to train for firearm use and firearms used when discharged could very well reach my property. The safety risk is real, imminent and will cause not only danger but a decrease in the value of my property. The ongoing noise from TigerSwan's facility will be a nuisance and disruption for me and my family and will disturb our peaceful enjoyment of our property which will also result in the decrease of value. The Cumberland County Noise Ordinance itself expressly states that "excessive and unnecessary noise depresses property value". If this facility is allowed, that is exactly what will occur in this case. TigerSwan has informed that the proposed training will include the use of nighttime helicopter activity and explosives. It has also acknowledged that even though efforts will be made to reduce noise the sounds could still be heard and could be worse at times such as at night when the cloud coverage is low, with the firing of expected millions of rounds per year, weapon firing noise will also be significant and will not be remedied by the County Noise Ordinance or a 60 decibel night time limitation. There is simply no way the noise from the activities will not cause significant disturbance to me and my family. TigerSwan currently has a training facility in Linden and there have been noise complaints from the neighbors who say it is miserable. If the military training facility is put on the adjoining property, I would not want to live on or visit my own property. I know no one would choose to be able to buy property next to a firing range or military training facility. I know I would not and have no doubt our property values would be greatly diminished or even destroyed by the TigerSwan facility. The environmental concerns I have for my property are the soil, water, wetland and wildlife will be adversely affected because of lead contamination that we believe will be caused by shooting ranges and other gun fire. I

know of no laws that protect my property from these risks so damage is certain to occur to my property. It is widely documented that shooting ranges cause lead contamination, the water table in the area is very high and there are significant wet land areas. Lead contamination from the TigerSwan facility could travel to my property and contaminate the water and soil. It is a very deadly toxin. Ammunition is made from lead and after firearms are discharged at shooting ranges and otherwise, it results in lead pollution which has also been shown by numerous studies. At TigerSwan's proposed facility, there will be seven to fifteen million rounds fired annually. There is no assurance that this will be cleaned up. Left on the ground, the lead will enter the soil and this will migrate into adjoining properties including mine. We use our property to farm and hunt. The risk of land contamination will prevent these activities from continuing. TigerSwan promised to provide a local phone number for the community so that we could contact the appropriate party with our concerns. They have not done so and are simply moving ahead with no apparent concern to the impact on me and the other neighbors. Also, TigerSwan indicated that firing would be done during normal business hours, Mon-Fri, and they would not train on the weekends. They have now changed this and training will occur at night and on the weekend. This is not appropriate times for firearms and military training to occur in such close proximity to agriculture and residential properties. In sum, my family and I would suffer adverse impact resulting in decrease in value of property and diminished quality of life should this unlawful use be allowed.

CHAIR QUIGLEY: Do you have any expert testimony that your property value would be diminished?

MR. LOCKAMY: No sir, I do not.

CHAIR QUIGLEY: I remind you that you remain under oath.

MR. LOCKAMY: Yes sir.

CHAIR QUIGLEY: Thank you.

CHAIR QUIGLEY: Ms. Currin, are you representing the Fort's.

MRS. CURRIN: Yes sir, I am and I would like to make a brief statement regarding standing in the state of North Carolina. The leading case in standing to appeal state Board of Adjustment decisions or to the Board of Adjustment is a case "Mangum vs. Raleigh Board of Adjustment". I know that case very well because I represented one of the parties in that case. It went to the Supreme Court and a decision was rendered in December 2008 and in that case the Supreme Court specifically said that "expert appraisal or testimony as to value is not required to show standing of any property owner" particularly if you are an adjacent owner, there is a presumption of damage. In Mangum, it was held by our Supreme Court that concerns of adverse effects were sufficient to show the aggrieved party status sufficient for standing under our law. In Mangum, one of those petitioners, two were adjacent, one was a mile away and they were all held to have standing to appeal. Their concerns specifically were: first, an increase in traffic; second, a fear of increase in stormwater runoff; third, safety concerns; and fourth, parking problems. They had no expert whatsoever and the Supreme court said this is enough. When you are next door and you have concerns such as this you have standing sufficient to come forward to bring your case not only to the Board of Adjustment but to the Superior Court after that. I don't know if you're aware of that case, I actually don't have it with me, but I can provide it to the Board which is very clear.....

CHAIR QUIGLEY: We're not that kind of a Board.

MRS. CURRIN:that concerns much less significant than my client will speak to. There are three or four cases that have been decided since then; one of them is the Bailey Case where the court said a concern of the neighbor that they would lose their view of ducks in the morning and being able to look at them is enough to establish standing. As you listen to my client testify, I would respectfully ask that you perhaps consider what the Supreme Court has said with respect to standing in these types of proceedings.

CHAIR QUIGLEY: Thank you.

MRS. CURRIN: Now I would like for Mr. Fort to testify.

CHAIR QUIGLEY: Will Samuel Fort come forward.

Chair Quigley swore in Mr. Fort.

CHAIR QUIGLEY: Would you please state your name and give your address for the record.

MR. FORT: My name is Samuel D. Fort, I live at 6505 Emu Drive, Hope Mills, NC.

CHAIR QUIGLEY: Your property is located? The Fort property?

MR. FORT: It's being pointed out now, right above the two mile.....

CHAIR QUIGLEY: Okay, thank you very much and yes Sir, what would you introduce?

MR. FORT: As I mentioned, I'm Samuel B. Fort and I live in Hope Mills, NC, but my family owns property that is directly adjacent and may therefore be subject to more damage than the others, but its directly adjacent to the tract of land proposed to be used as the TigerSwan Collaborative Training Center and that is the issue in this case for which the County has issued site approval. I have a map which I've created that shows the site plan area, its similar to that area. Do we need to have it up? We can just show it right now and refer to it later.

CHAIR QUIGLEY: Is that available to us?

MR. FORT: We have it in various prints.

MS. CURIN: It's in Exhibit II in your note books and also attached to Mr. Fort's affidavit.

MR. FORT: Okay, that's the map that I used the GIS mapping to create the base map already and then added some notes that I'll be talking to. It's incorporated here in the reference. My family has owned and lived and worked on this 200 acres of land for over 150 years. It's located in the agricultural zoning district and is a rural area intended for farming and single family homes. Even though the farm was subdivided approximately 20 years ago by family members of eight siblings, ownership of the farm continues to remain in the family. While I do not live on the property, my family and I do visit often and I use the property for various purposes. For example, I have a garden there and we also use the property for recreational purposes and I expect that my wife and I and other family members will live on the farm someday in the future. My family and I have significant objections to the proposed TigerSwan facility. We brought this appeal because under no reasonable interpretation of the County

Zoning Ordinance can this facility be reasonably classified as a school, public, private, elementary or secondary. The TigerSwan facility is simply a permitted use in the O&I(P) district and completely inconsistent with the uses and purposes of that district and the surrounding area. If this grave error of classification is not corrected the damages suffered by me and my family including the decrease in the value of our property will be substantial and irreparable. There is no doubt in my mind that our values will be greatly diminished by the presence of the operation of TigerSwan that their currently planning and that it poses a significant threat to injuries specific and indirect loss to us. Specifically those damages which are distinct from community at large are as follows: Safety: the TigerSwan facility is self described as a military law enforcement and security personnel training facility. It will contain shooting ranges and provide instruction and training and among other things firearms and other weaponry, tactical marksmanship, convoy live fire and urban warfare. TigerSwan's advertising states "For those who have hunted armed men, training will never be the same." Their literature also states that it trains students of all skill levels from highly skilled special operation operators to students possessing minimum or no skills with fire arms. This means in addition to the soldiers and law enforcement officers, people who have never shot a gun in their live will be receiving training at the facility and doing so for the first time. The acreage is described as 978.4 acres, therefore training operations can span an incredibly large area. In addition to the actual shooting range, there is nothing in the site plan or otherwise that limit on the property where gun fire can occur. Thus, this training to unarmed men can cover 978.4 acres, acres that brings it dangerously close, in fact, potential dangerously adjacent to my property. The site plans reminds that all levels of small fire arms such as 9mm, 45 caliber, 5.56 mm, 7.62 mm, will be used and provided on the site. Additional ammunitions can be added by single request to the Sheriff's Dept. Our research reveals that small firearms is a term used by the armed forces to include any weapon that a soldier can carry. This includes revolvers, pistols, submachine rifles, assault rifles, sniper rifles and hand grenades and also includes the 50 caliber weapon. Using these weapons in the vicinity of homes and farms is clearly a safety risk and subjects me and my family to danger. In addition, according the the Department of Army Range Safety Pamphlet, 385-63, that was submitted with the TigerSwan site plan, a 7.62 firearm which is expressly allowed under the approved site plan, has a surface danger zone firing distance of 4100 meters; that's over 2 ½ miles. Thus if a target or berm is missed, the shots could, without question, reach my property and beyond. This puts us at risk of gunfire at our homes and farm. There are absolutely no enforcement mechanisms that the County has to prevent such an occurrence. In fact, the County is regulating the facility as a private elementary or secondary school, which of course do not allow firearms at all or regulate them so that this charge does not reach neighboring properties. We will not be able to safely use our property without risk of gun fire. In sum, the TigerSwan facility's main purpose is to train for firearm use and the firearms used and discharged could and very well may reach my property. The safety risk is real and its immediate and it will cause not only danger but a decrease in the value of my property. In area noise, the ongoing noise from the TigerSwan facility will be a nuisance and disruption for me and my family and it will disturb our peaceful enjoyment of our property which will also result in a decrease in the value of my property. The Cumberland County Noise Ordinance itself expressly states "excessive and unnecessary noise depresses property values." If this facility is allowed, that is exactly what will happen in this case. The Cumberland County Sheriff's Office records includes several shooting noise complaints from near shooting range in the Linden area. This site has been used by TigerSwan to conduct training. There are no records made available that indicate that the noise wherever measured will determine if they were in violation of the noise ordinance or if the complaints have ever been fully resolved. One complaint letter from an individual on June 7th of this year to a county official began with and I quote "I hope you have not closed the shooting range file here in Linden, we had the worst shooting this past

weekend for three days. The noise was terrible.” The letter ended with “I sure hope you will help in this matter as this is a miserable life and we are outside working a lot.” TigerSwan has acknowledged that the proposed training will include the use of nighttime helicopters, activities and explosives. It is also even though efforts will be made to reduce noise, the sound could still be heard and could be worse at times such as at night or when there is low cloud cover. In regards to noise according to the acoustical report that is included in the site plan, there is say... there is no actual berm benefit for the carbine range and in the case of the 50 yard range the berms only reduce the noise by 1 – 2 decibels. With the firing of the expected millions of rounds per year, weapon firing noise will also be significant and will not be remedied by the County Noise Ordinance. The County Ordinance has a very low restriction on noise that may be produced during the daytime hours and not everyone is away from their property in the daytime. At the community meeting held on December 1, 2009, TigerSwan’s representative said and I quote “Everybody will be gone during the day at work anyway.” That’s simply not the case; some people may have to work at night and try to sleep in the daytime. Others may be retired and otherwise not work. I personally often visit my farm during the daytime hours and will be bothered by noise from helicopters, explosives and gunfire. Others work from their homes or are confined to their homes such as the retired, the sick and maybe the elderly. How restful will their existence be? The TigerSwan folks also said in their December meeting that the range may also be used on the weekend for local interested participants and of course that’s when almost all owners and residents will be present on their property. Obviously helicopter over flights and explosives day or night will be significantly disruptive, particularly, to property owners like me who are directly adjoined to the TigerSwan property. In addition, the noise ordinance only measures noise from the property line which would not apply to aircraft coming and going such as helicopters; thus there could be substantial noise from these helicopters and the county would have no enforcement mechanism. In fact, aircraft are specifically exempt from the noise ordinance which may make sense for an occasional over flight, but not for a military training facility with helicopter training in an agricultural and residential district. The noise will be detrimental and neither the noise nor the site plan conditions will operate to prevent the danger and the property devaluation to me and my family. In areas of environmental concerns, I also have environmental concerns for our property. The soil, water, wetlands and wildlife will be adversely affected because of lead contamination that we believe will be caused by the shooting range and other gunfire. The TigerSwan facility also imposes a substantial risk to the wildlife, soil and groundwater on our property. Like safety, there are no county regulations, which govern the activity that pose these risk, which leave me virtually unprotected from damages that will most like occur on my property. This is a long term issue which will result in damage to property and property value well into the future. It is widely documented that shooting ranges cause lead contamination. The water table in this area is very high and there is significant wetland area. There is no question that the lead contamination from TigerSwan’s facility could travel to my property and contaminate the water and the soil. The county has already areas of unsafe drinking water due to contamination. Preventing possible future contaminations of this valuable resource should be a high priority for all of us. Lead is a very deadly toxin, ammunition is made from lead and after firearms are discharged at shooting ranges or otherwise, it results in lead pollution. Numerous studies have documented that outdoor shooting ranges are major sources of pollution in the environment. Studies have shown that outdoor shooting ranges put more lead into the environment than most industrial uses. At TigerSwan’s proposed facility there will seven to fifteen million rounds fired annually. They say they will clean up this, but as stated; the county has no mechanism to regulate it. Left on the ground, the lead will enter the groundwater and this will migrate into adjoining properties including mine. We use our property to farm and hunt and the risk of lead contamination will prevent those activities from continuing. If the TigerSwan facility is allowed to go forward, we will not allow hunters to hunt on our land as we have in the past. Our concerns here are about

hunters personal safety while on our property and we could not in good conscious allow anyone to eat meat that roam over the adjoining firing range. Property values – if this military training facility is put on the adjoining property, I will not want to live on my own property. I cannot imagine anyone would want to build a house, making a large investment and live nextto a firing range/military facility. I'm an ordinary citizen, I believe, with the same common sense and values as most of the people who live or want to live in Cumberland County. I would not want to purchase such a property. There is no doubt in my mind that our property values will be greatly diminished or destroyed by the presence of the operation that TigerSwan is planning. As a citizen of Cumberland County, it's really disappointing to learn that such an operation can qualify under the school definition of the County Zoning Ordinance. I wonder who of us really believe that any operation such as the one TigerSwan is planning is what the authors had in mind when they wrote that schools are a permitted use in each and every residential zone in the two agricultural zones in the County. Only the commercial and industrial zones which do not list schools as a permitted use wouldn't be subjected to an invasion of this type of operation. In the August 3, 2010, Fayetteville Observer article, A Good Neighbor Gun Range, TigerSwan's public relations manager, Mr. Butner wrote that "Barra Farm site was specifically chosen because it was, and I quote "isolated enough for their strict safety requirements." There are more than seventy residential home sites located in a three mile section of Hwy 210 Corridor near the site and its indicated on the map by the small star. All the residents and many more in the neighboring communities are within 2 ½ miles of the shooting range. I know that all these folks do not feel that they are isolated enough from this proposed operation. In summary, my concerns with this operation are that it will destroy the fundamentals of the preserved open space and rural peaceful character of the area. It will threaten my family's safety and adversely affect the value of my property. I am not unpatriotic and I believe the military must have the best training available. However, we do have a military base of over 160,000 acres and we shouldn't need to transform this rural part of eastern Cumberland County into a military area to benefit the private sector. It will continuously present a noise nuisance and presence of activity that will be a disturbance to the daily lives of all of those who live nearby and will hurt the values of the surrounding properties. This will happen even if they abide by the firearms and noise regulations. This is saying nothing of the potential safety of the environment, wetland and wildlife preservation concerns. I am still hopeful that there is enough concern among the individuals reviewing this to not allow this operation to be established at this site. Even though I do not live on the farm now, I do continue to work and spend time in the fields and the woodland of the farms. Family members including children, grandchildren and friends spend time there. We have allowed some hunting on the property but we continue to appreciate and value the peaceful of existence of the wide variety of wildlife that exist in those woods. This include blackbear, deer, foxes, waterfowl, rabbits, birds, just to name a few. The farm and forestry and abundance of wildlife in the rural atmosphere of the area is essential for the enjoyment of the property. If this proposed operation of military type training is allowed I will not feel safe to continue establishing my property in the way that I have done in the 60+ years of my life. We all know that bullets don't always hit their target. Thank you.

CHAIR QUIGLEY: Pardon. You do not reside on that property?

MR. FORT: I do not.

CHAIR QUIGLEY: Do you have any evidence that there are lead rounds impacting any place on your property?

MR. FORT: At this time?

CHAIR QUIGLEY: Yes.

MR. FORT: I do not; I have not measured any

CHAIR QUIGLEY: The complaint that you cited was for a range in Linden?

MR. FORT: For the noise?

CHAIR QUIGLEY: Yes.

MR. FORT: Yes.

CHAIR QUIGLEY: Thank you; any other questions? Thank you, sir.

MS. SPEICHER: If this would be an appropriate time Chair, staff would like to object to the map that Mrs. Currin was holding up and the same reduced copies of the map that were included in her exhibit. First of all, the map shows the entire Precythe tract, which that entire site was not approved for TigerSwan, which brings the radius out much further. They are showing seventy homes, but we only have a total of two homes subject to this appeal. Also, on the Lockamy tract, which is subject to this appeal, they are showing two homes; well according to our on-site visit and the county tax records, there's one manufactured home on that site.

CHAIR QUIGLEY: Thank you.

MRS. CURRIN: May I respond please?

CHAIR QUIGLEY: Remember now, all we're going to see is who has standing in the case.

MS CURRIN: I understand, but if she objects, I can respond to her objection. I also would like to present this as evidence if I could.

CHAIR QUIGLEY: We'll admit that into evidence.

MRS. CURRIN: Mr. Fort, did you prepare this particular map based on your review of the county land records?

MR. FORT: Yes, I did.

MRS. CURRIN: Okay, and based on what you put on this map, is that an accurate reflection, in your opinion, of what the county land records show?

MR. FORT: Yes.

MRS. CURRIN: Have you looked at the TigerSwan approved site plan?

MR. FORT: Yes, I have.

MRS. CURRIN: Can you tell the Board, how many acres that site plan states is approved for this facility?

MR. FORT: 978.4

MRS. CURRIN: As far as the outline, have you reviewed the county land records to determine the property identification number for the area outlined in turquoise there?

MR. FORT: Yes, I have.

MRS. CURRIN: Is that pin # this one? Can you read this out please?

MR. FORT: Yes, it's parcel # or pin # 0493-04-5262.

MRS. CURRIN: Are you reading off the approved site plan?

MR. FORT: Yes, I am.

MRS. CURRIN: Is that particular PIN based on your review of the county land records, include every bit within that aqua (referring to the aqua shaded area in the presentation on screen).

MR. FORT: It includes all of that plus some more that's included in the parcel, that is listed now on the land records.

MRS. CURRIN: So regardless of where these shooting ranges are respectively, this site plan has been approved for this use for that whole area and he is directly adjacent to the property that's been approved by the Planning Board.

CHAIR QUIGLEY: Thank you and thank you Mr. Fort, I remind you that you remain under oath.

MR. FORT: Yes sir.

MS. SPEICHER: Chair Quigley. If I could just point out in the staff presentation, we showed the site plan as approved on the subject property, as approved and not to quibble about the property, but it does not include the entire tract.

CHAIR QUIGLEY: I understand, thank you.

MR. FORT: Mr. Chair, did you make a ruling on the admissibility of this map? I wasn't sure what your ruling was.

CHAIR QUIGLEY: I'm going to recall Mr. Lockamy. Mr. Lockamy, I wanted to introduce your affidavit into the record.

MR. LOCKAMY: I'm sorry?

CHAIR QUIGLEY: We're introducing your affidavit into the record.

MR. LOCKAMY: Yes, sir.

CHAIR QUIGLEY: Thank you very much.

MR. CURRIN: Chair, for the record, I want to please object to Ms. Speicher making an objection, I believe she's more of a witness in this matter than an attorney, so I would agree to strike her objection as a matter of proceedings.

MR. LLOYD: May I ask a question to the Board?

CHAIR QUIGLEY: Yes, Mr. Lloyd.

MR. LLOYD: Does the staff in this case, as sworn in, are they ruled to be representing themselves in this matter, in the capacity of attorneys?

CHAIR QUIGLEY: Yes.

MR. FORT: I'm sorry, what is the question?

MR. LLOYD: I asked if the staff was recognized as representing themselves in this particular case and thus becoming their own attorneys.

MR. FORT: I don't believe any of these staff members are pardoned. Anyway, for the record, I object.

CHAIR QUIGLEY: I understand, is there any objection to the plat that they show on the map?

MR. RAYNOR: Yes, there is no objection, it's only a map. It would be appropriate for the board to even overrule that objection and to sustain that objection.

[Mr. Raynor approached the Chair – comments inaudible]

CHAIR QUIGLEY: I'll overrule that objection. Thank you very much. What I would like to do is acknowledge that the people who have testified have standing. Does TigerSwan have someone here? Does TigerSwan wish to discuss any of the testimony that has been given so far?

CHAIR QUIGLEY: Would you come forward please?

Chair Quigley swore in James Reese.

CHAIR QUIGLEY: Would you please state your name and address for the record.

MR. REESE: Yes, sir. My name is James Reese, 3452 Apex Peake Road, Apex, N.C.

CHAIR QUIGLEY: Your relationship with TigerSwan is?

MR. REESE: I'm the Chief Executive Officer of TigerSwan.

CHAIR QUIGLEY: Thank you. You heard the testimony given so far that established the people have standing.

MR. REESE: Yes, sir.

CHAIR QUIGLEY: Do you have anything you want to say about this?

MR. REESE: Well, sir, coming here, like you said, I thought we were here to talk about standing. I'm a retired Army Colonel from Ft. Bragg. I have eight tours as an enlisted officer. I have eight tours of combat between Afghanistan and Iraq. My only frustration here is we're here talking standing, my only frustration is that you were given a lot of facts, the Board was given a lot of facts that are completely untrue. We have from December of this year, been completely open to everyone, we have given phone numbers out, Mr. Billy Meines has my card, Mr. Meines' brother, I drove him out to the range the other day and I don't think we're here today to discuss every fact the folks here are looking for standing and I don't want to take everyone's time. But, just a couple of things. First, you see the land? Ms. Speicher, can we see the map that shows, the ground? Just two things real quick. This is Mr. Stewart Precythe, he's the land owner, and we have used him extensively in the last six or seven months. I've been working on this project and have watched this for three years. I don't have the money to have a lawyer, okay...so I'm by myself today. The beauty of this tract of land.., how many people out here own a weapon?

CHAIR QUIGLEY: Pardon me.... I ask the questions.

MR. REESE: Yes, sir, I apologize.

CHAIR QUIGLEY: Thank you.

MR. REESE: This is the tract of land that Mr. Precythe owns, right here (pointing to the presentation). This tract of land is the only land the training center is built on. Patti, could you go back to the one that shows the surface danger zones? This is the site plan, right there, that's the acreage right there that we're building on. This is the land that the surface danger zone that is regulated by the Department of Defense and the National Rifle Association that was approved by the Army Corp of Engineers; that we looked at and approved it. This shows the weapons that are in the site plan and that are contractually signed off by Mr. Precythe of what we can shoot here. That is the max range, the max ordinance, so if you shoot that bullet with nothing to stop it, that's as far as it will go in that direction. Now, the other aspect is, this part over here, Mr. Precythe's land continues all the way out to here (pointing again to the presentation). So, that's one aspect that's a little frustrating to me. We at TigerSwan have hundreds of hours of training with no incidents? We're both retired from the Delta Force at Ft. Bragg. Our instructors are both former Special Forces soldiers, we have Cumberland County law enforcement officers who are senior instructors and we take it very seriously. When we went out in December, we told everyone, here's what we want to do. We want to be good neighbors, we want to be as open as you can, call me, e-mail us, whatever. I go out there a lot. I've got our communications director here. We are working hard to stay within the community, however, there are a couple of things. The weapons systems, there are no 50 calibers being shot there, none; never will be, it will not fit in the surface danger zone. We will not break the law, we will stay legal, moral and ethical on everything we do. We're not going to do that. We have a contractual agreement with Mr. Precythe, that's a contract that says "if we decide to leave, we have to clean up the lead", it's in the contract that Mr. Precythe has. It's one of the standards he needed, okay? Even though people have stated that the county may not have rules about the clean up about things, we are using the Department of Defense rules and we will exceed those rules. If the county doesn't, we want this to be a site that everyone models. We look at it as an economic development for the county. When I started looking three years ago, Sampson County really wanted this bad and the Cumberland County Chamber of Commerce really worked hard with us. The beauty of this land is our surface danger zones do not leave our property that we're leasing from Mr. Precythe. That's a key fact, that we don't have, so we

don't lose it. The surface danger zone is a little confusing to people, I'll sit here all night and explain it and have no issues doing that. The night we were there, Mr. Fort was there, and we sat there that night with several people to explain what the surface danger zones were and tried to make it as simple as possible, that's why I brought Mr. Meines out to show him, we walked the ground when we had the meeting last Tuesday to talk to the business folks out at Exit 49. We understand that people are concerned. We understand that, but we're not bad people, people have decided to do this in the paper, call us mercenaries, call us all of this. I've been fighting for this Country for a long time, I've got about 200 men and women still engaged in Iraq who are working for TigerSwan right now. We had a National Guard unit last year that we trained; go to Iraq. The First Sergeant from that organization called us and said the school that your men put us through, saved our lives. The active duty unit that was beside us was decimated and your training, your school saved our lives. I'm not here...I don't want to bicker back and forth. We want to be good neighbors, we have invited everyone to come out, you have to come out and see these berms; I mean, they are massive. For the economic development of Cumberland County, that's a big aspect that we're trying to do here. Everyone that's working on this project is from Cumberland County. The engineering company, the construction company; we have locals right within a couple of miles from the property that we have spent and we bring them in as day laborers because they're looking for work and we're putting people to work. There are people out here behind me right now whose relatives of them, who have come and asked, is for work.

MR. FORT: Chair, I'd like to object to all of this.....

CHAIR QUIGLEY: Pardon me.

MR. REESE: So, we will continue to stay transparent to everybody. We do understand everyone's concerns. I have two little girls also, they go to school here in Cumberland County and I wouldn't want them having groundwater affected either. That's why in our plans, we have weekly, quarterly, semi-annually and annual lead mitigation. We have a whole entire lead mitigation plan all set up. I understand everybody's studies from before, but the U.S. Army is looking at ranges that haven't been touched since WWII. So that's why there is tons of lead out there, and I get it, I completely understand it, so, again, we're here to answer any questions. I know tonight is for standing. We're here to answer any questions anyone has about any issues, but all I ask is if you're going to say something, at least say it if it's factually and if you're unclear, let us have a chance to just say well, that's not correct and here's what the correct is. That's all I have, sir.

CHAIR QUIGLEY: Thank you. What are your hours of training?

MR. REESE: Sir, first off, their daily during day training. Here's the beauty. We could have zero rounds fired at this range. This range is speculative. My partner and I are so financing this, it's speculative. No one could ever show up here, no one could ever show. So no round might never go down, so we'd both lose our houses because we're on second mortgages to do this thing. So, the other aspect is that it could be fifteen million rounds, absolutely. In the last six months, we have done night training, twice. Let me also tell you the Linden range is not ours. It is a privately owned piece of property out by Linden and those probably fifteen or sixteen other so called people that do training, there are turkey shoots out there I think every Sunday and Thursday. Around this area right here, there's tons, I take that back, there are several ranges of people who own property just to the South of us; there are ranges that people own on their property. So, again, we usually run our training between 8-4, 8-5 and what I do want to promise everyone is if someone, and the reason we said it might be night training is

because I don't want to say "No, there's not going to be night training", because I know someone from Ft. Bragg is going to say, can we come out and do night training? We have a responsibility to the community. Again everybody wants to talk about helicopters. Nowhere in our site plan did we say there's going to be helicopters. There's no mount training facility out there. What we said was; there might be helicopters. My point is I don't want to say there's not going to be and the people who are laughing at me don't understand. The Department of Defense has a policy called Realistic Urban Training. The county probably knows this very well. When I was in Delta, if the military leaves a military base now to do any type of on the ground training with helicopters, it must be approved at the county and state level. It's called a RUC (Realistic Urban Training). I came down here and briefed it several times to the county. The Sheriff's Dept. is involved, the county is involved, we would do operations in downtown Fayetteville doing live fires, in downtown Fayetteville, in deserted buildings. As mandated by the Department of Defense, it must be briefed, and approved by the county and the state congressionally because of problems that happened at other places. So, again, I'm trying to show that there are safety aspects out there, I could talk all night about this, but, it's been a long night, I'll stay all night if I need to.

CHAIR QUIGLEY: Thank you, does anybody have any questions?

Mr. and Mrs. Currin are requesting the opportunity to cross examine.

MR. RAYNOR: Before we get into cross examination, we still have awe have a standing issue as to whether or not these appellants have the standing to bring this before us. The testimony has gotten far away from standing. If you're going to allow cross examination, it should go to the question of standing. That's the question that is before the Board at this point. The Board's going to have to make a consideration and a decision on whether or not these appellants have standing to go forward with this appeal.

CHAIR QUIGLEY: Thank you. Pardon us for just a moment.

CHAIR QUIGLEY: When we're talking about standing. Standing is these people who have raised this appeal, have some unique sort of a situation that would lead us to conclude that they could have standing in this case.

MR. RAYNOR: Mr. Chairman, if you've heard all the testimony, if everybody's finished on the standing issue; I don't know if you're going to find out if everybody's had their say.

CHAIR QUIGLEY: I think we've heard everybody that has filed for the case.

MR. CURRIN: Mr. Chairman, just for the record, we would like to cross examine this man (referring to Mr. Reese) and we certainly have that right on behalf of our clients.

CHAIR QUIGLEY: Ms. Speicher.

MS. SPEICHER: Staff would like to address the standing.

MR. RAYNOR: He does have a right to cross examine. All the witnesses do have a right to cross examine, but you can confine that cross examination to questions relating to the issue of standing.

CHAIR QUIGLEY: Got it. Chair Quigley called Mr. Reese to the podium again.

CHAIR QUIGLEY: What I'm going to do is confine your questions specifically to standing.

MR. CURRIN: I will do that Mr. Chairman, I would like for the record to reflect that I disagree with that ruling in light of all the things he's talked about. I should be allowed to examine him about anything he testified about, however, since you've instructed me to do that, I will do that, but I want to apply my objection to your rule.

CHAIR QUIGLEY: I understand.

MR. CURRIN: Now, Mr. Reese, you mentioned a couple of times....I want to make sure I got your statement right, you said "I know tonight is for standing", did you make that statement?

MR. REESE: I did.

MR. CURRIN: Have you had conversation with anyone with the county or anybody about the fact that tonight was supposed to be about standing?

MR. REESE: We received documentation from the county that said there's a commission hearing on standing.

MR. CURRIN: On standing? Who told you that?

MR. REESE: Maybe standing....I don't know, I've heard it here several times here tonight, so that's what I said.

MR. CURRIN: Well, I'm asking if you did you have conversations with anybody about this hearing being only about standing?

MR. REESE: No.

MR. CURRIN: Well why did you say you know tonight is for standing?

MR. REESE: Because I've heard it several times from everyone here and that was my assumption.

MR. CURRIN: That was your assumption?

MR. REESE: Yes.

MR. CURRIN: Okay. Now, you don't contend that your facility is an elementary school, do you?

MR. REESE: It's a school.

MR. RAYNOR: That goes to the appeal that was before, the appropriate question is if the Board rules then their standing and appeal moves forward?

MR. CURRIN: Again, Mr. Chairman, he went through many things in his testimony which this is one of the things he covered, so.....if you instruct me not to ask him that, I won't ask him that but.....

CHAIR QUIGLEY: The elements that I reviewed in order to discuss this case of course were: was it filed properly and do the appellants have standing; and then eventually we'll get into was the zoning officer's designation correct.

MR. CURRIN: Very well your honor. I won't ask him that question. Now, Mr. Reese, I believe you testified with the effect to standing. Are you saying.....

MR. RAYNOR: This is kind of on the side, but the irony is just too great not to pass up. In the Mangum case, the superior court judge involved in that case was Narly Cashwell, I don't know if anyone knows, but Narly grew up in Massey Hill. The judge that wrote the opinion for the Supreme Court was our own Ed Brady from here in Fayetteville and our own Justice Pat Timmons-Goodson, she wrote the dissent in that thing. So Fayetteville has its fingerprints all over the Mangum case which is the leading case on standing at this time. However, the court did not expressly say that there was a presumption that if your property was adjacent that you had standing. That's not what the court said at all. What the court did was expand the concept of standing and it did allow lay testimony as to certain things and in this case they did talk about increased parking, traffic and stormwater runoff, but each of the plaintiffs' were able to show that their property would be affected because their property was lower than the subject property and the water would run down on it because the parking in the subject parking was not adequate and their parking was next to it and they had a parking lot that would be spill over. They were able to show and what the court said, and what the key thing is in Mangum, the allegations and testimony were sufficient to demonstrate special damages in these property owners separate and apart from the damage to the community as a whole might suffer. The standard still is special damages, the party has to show that the damages to their property that this use will cause a unique and different from the damages that be, people surrounding them would have. Also, coming out of the Mangum, that case was decided in December 2008, the legislature in July 2009, passed a law that codifies this issue that went into effect in January 1, 2010 and I believe that is the controlling law at this point and time until such time the court would overturn this. That Statue specifically says that to have standing a person who will suffer special damages as a result of the decisions being appealed. So, it establishes you have to have special damages. To find that these appellants have standing, this Board must find that the evidence that they've given shows that they will uniquely be damaged on their property in a way that will not be the same as all the other people surrounding them in that community. It talks about in the community, so the community would be in that if you will, about that 2-3 mile circle around this, that would be affected by this. That's the standard that you have to find that is met in order for these appellants to have standing and to go forward with their appeal and present evidence on the interpretation issue.

Chair Quigley pauses to ask all the Board members if they were clear on what Mr. Raynor just spoke on.

MRS. CURRIN: May I respond again?

CHAIR QUIGLEY: Yes, go ahead.

MRS. CURRIN: Yes, it was my case, I lived and breathed it for a very long time and Mangum does not say that more than one person can have special damages. Every single person adjacent to that property could have special damage. They have to be unique from the community at large. My client, Mr. Fort is right next door. Those guns can fire 4000 meters, which is within the range of his property. In Mangum, I could read it to you, I do not have it with me, I did not

know standing was going to be such a big deal because we felt we complied with Mangum in every way. All they said was, we are afraid the stormwater will come over to our property because we're lower. Mr. Fort is saying, "I am afraid a bullet is coming over to my property because it has a range of 4000 meters and I'm less than 4000 meters away." They said we're afraid there's going to be more traffic, but there is no evidence about how much traffic there was. They said we're afraid people are going to park on our property, but the approved plan said they could not, so it was a fear that wasn't yet materialized. Ironically, in that case, Dan Yoor, the owner of Angus Barn which is one mile away from that site, came into the Board of Adjustment and testified, "I am afraid that this establishment, one mile from my restaurant, people will come over here to my parking lot, and scare my patrons and therefore my property value will go down." The Supreme Court of North Carolina said that mile away fear was enough. I would submit that this, what has been submitted to you by Mr. Fort today and the others, is well beyond anything that was submitted in Mangum or cases since.

MR. RAYNOR: Mr. Chairman?

MR. QUIGLEY: Yes.

MR. RAYNOR: There again, I will have to say that the legislation came back after Mangum and passed statute and that is what is codified now and in that statute and it is in the statute that the term competent evidence and this changes Mangum, as used in this subsection. It goes on to say "the term competent evidence as used in this sub-section shall not be deemed to include the opinion testimony of lay witnesses as to any of the following: the use of property in a particular way with effect of value of other property, the increase in vehicular traffic resulting from a proposed development with pose of danger to the public safety and matters about which only expert testimony would generally be admissible under rules of evidence." So, that is the standard the Superior Court will judge this group by and you have to follow it. That's what the legislation has done in light of Mangum and so I think when you consider that, have competent and expert evidence on matters that would normally require an expert, and do you have competent evidence as to value of land from an expert, do you have competent evidence as far as traffic safety from an expert, and you have to there again, if codified, you must have special damages, and did they prove their damages were differently from the community itself?

MRS. CURRIN: I can respond to that because I was on the committee that wrote that legislation. It was intended to codify Mangum 100 percent. What he is reading from is the material of competent substantial evidence that must be shown to prove your case, not standing. That standard does not apply to standing, never has, never will. When Mangum had come down, as a matter of fact, there were a lot of people who said Mangum was a bad decision and we need to legislate it away, but unfortunately, under the law, the legislature can't come in and write out the decision of the Supreme Court. So that provision which is 160A-393, keeps the Mangum standard for standing. What it does is, when we start our case, if you let us have one, we will have to present competent evidence and substantial evidence to prove our case not to prove standing, that has never been the case and that statute does not say otherwise.

CHAIR QUIGLEY: Mr. Raynor?

MR. RAYNOR: I stand with what I've just said.

MS. SPEICHER: The staff had something to offer the Board for their consideration.

CHAIR QUIGLEY: Who wants to present for staff?

MS. SPEICHER: We have packets that we'd like to offer.

Ms. Speicher hands out packets to the attorney's and Board members.

MR. CURRIN: Mr. Chair, while she is doing that, may I just submit my objection for not being able to cross examine Mr. Reese?

CHAIR QUIGLEY: Thank you.

MS. SPEICHER: Staff would like offer this for the record just showing since firing ranges and etc. and property values was brought up that this is the U.S. Fish and Wildlife Firing Range. It's been in existence longer than I've been in Cumberland County's 1988. We've attached copies of tax sheets over three different years showing the escalation of the property values and that that existing range has not affected those property values.

MRS. CURRIN: Well, I object if you need an expert, because she's not one either.

CHAIR QUIGLEY: Thank you.

MS. SPEICHER: This is a matter of public record, Chair.

CHAIR QUIGLEY: Not allowed.

MR. LLOYD: Chair Quigley?

CHAIR QUIGLEY: Yes?

MR. LLOYD: In light of the evidence that's been offered, I would object to the police reports for the Linden site. The Linden site was a 45-acre tract, clearly less than 1/20 of this tract.

MRS. CURRIN: We haven't offered that yet.

MS. SPEICHER: It's submitted in the notebook. We'll bring it back.

MRS. CURRIN: Those were for reference, we haven't offered those yet.

MS. SPEICHER: We'll bring it back.

CHAIR QUIGLEY: I'll accept a motion on standing.

CHAIR QUIGLEY: Mr. Humphrey, the form of the motion should be that you concur that they have standing or you do not concur that they have standing.

MR. RAYNOR: Mr. Chairman, you are asking.....?

CHAIR QUIGLEY: Do you concur that they have standing or do you not concur?

MR. RAYNOR: That standing is present for this entire meeting or not?

CHAIR QUIGLEY: Standing in the process of moving to the appeal process.

MR. RAYNOR: You have to establish they have a right to be at this appeal because if they don't have standing it would be dismissed. If they do have standing, then we'll hear the basis of the appeal which is asking the Board to interpret.....

CHAIR QUIGLEY: We're going to have to base that on the information that Mr. Raynor gave about damages.

MR. CURRIN: Mr. Chairman, I would object to that statement because Mrs. Currin has given a contrary legal argument for the Board's consideration, so they do not have to believe based on Mr. Raynor's comments.

CHAIR QUIGLEY: I understand.

Chair Quigley announced that meeting was in recess for a moment.

MRS. CURRIN: I object, Mr. Raynor. I don't believe they are supposed to be whispering amongst themselves in this public meeting.

CHAIR QUIGLEY: We're standing in recess.

MR. RAYNOR: They are in recess.

Chair Quigley reconvened the meeting.

CHAIR QUIGLEY: Do we have a motion?

MRS. TART: Mr. Chairman, in regards to Case P10-12-C, I move that we recognize the fact that the appellants do have standing for this to be heard.

CHAIR QUIGLEY: Do we have a second?

MR. DYKES: Second.

CHAIR QUIGLEY: The move has been seconded that we concur that they have standing. I'm going to ask for a vote with a show of hands. All in favor signify by saying aye and raising your right hand.

Quigley: Yes
Tart: Yes
Dykes: Yes
Humphrey: Yes
Autry: Yes

CHAIR QUIGLEY: That's unanimous that the Board has concurred that the appellants has standing to bring this appeal.

The motion was approved unanimously.

CHAIR QUIGLEY: Now we will hear evidence on the appeal. Mrs. Currin, who are you representing on the appeal?

MRS. CURRIN: I am representing Samuel and Doris Fort. The evidence with respect to standing, I believe they can come back up here and instead of rereading it, probably ask that that be considered because there is some part of their affidavit that has to do with the use. Would you like to ask them? I don't want to be here.....

CHAIR QUIGLEY: I believe that hearing the affidavit, they were remarkably similar so whether or not they want to reiterate everything we've already heard, I think that might be.....

MRS. CURRIN: I'll tell you what I will do, I would move to admit all three of those affidavit's and that they be used for purposes of our cases as well as for purposes of standing.

MR. RAYNOR: They are admitted into evidence for whatever purposes.

MRS. CURRIN: Again, my name is Robin Currin and my law partner, George Currin is here with me and we represent the appellants, Sam and Dorris Fort. There are the other appellants here as well, Ray Lockamy and Kay Faircloth. Now this case involves the correct land use classification for what has been represented as the TigerSwan Training Collaboration Center. The appeal is from the staff determination that this project, this TigerSwan Training Collaboration Center is a permitted use in the agricultural 1 or the A1 district. There are several approvals that were issued in June. One is the site plan approval and one is a zoning permit. These are both part of this appeal because in order for those to have been granted, the staff would have had to decided that this is a permitted use in this zoning district. They did that; they classified it as a private or public school, elementary or secondary. This decision was communicated to my client on or about May 27, 2010 and they filed an appeal within 30 days thereafter. It is my client's position that this classification is wrong. This is not a public or private school, elementary or secondary. It may provide instruction and it may be a school, but instead it falls within an entirely different zoning classification. Specifically, right now, as one of the exhibits in your notebook, Exhibit I, we have presented the relevant ordinance provisions, I believe they are probably a matter of record already, but I would ask that they be admitted, they are part of the staff packet.

MR. RAYNOR: The ordinance is part of the record.

MRS. CURRIN: Okay. The table of permitted use, I'm just going to do this quickly for reference, it's also behind Tab I as I've said. The table of permitted use: there are two types of schools in Cumberland County. One of those schools is referenced like this: School – business and commercial for nurses or other medically oriented professions, trade vocation and fine arts. Those types of schools or schools like that are not permitted in the A1 district. Now there's another type of school that is permitted in Cumberland County in the land uses. It is a school, public, private or elementary or secondary. That is permitted in the A1 district. When this site plan for a military training facility to teach law enforcement officers and military people how to shoot guns and perform military tactics and hunt our men, for some reason, got put in the elementary and secondary school category and not in the business, commercial, vocational and training. Now, it is our position that that was wrong. This is not an elementary or secondary school. It is instead a business or commercial school and under the zoning ordinance you simply cannot put that at this location.

CHAIR QUIGLEY: May I interject something just for a second?

MRS. CURRIN: Yes, sir.

CHAIR QUIGLEY: I did take English in high school and in college and that has “schools, public, private, elementary or secondary” which means that actually you can treat that severally, which may be schools, private.

MRS. CURRIN: Well, apparently that’s what the Planning Department did, but as you will see once we present the case and how that this Board is required to interpret this ordinance, that cannot be something that can be classified.....when there are two references for schools, the more specific one is going to apply. Which one is more specific and which one does this look more like. Secondly, there are principles that say, of statutory construction, that when you have schools public and private and those are followed by other definitions, then that is modifying the provisions in front of it. Furthermore, if you look at the purpose of the agricultural district and see what the drafters of this ordinance intended to be there, it is only schools which serve the necessary requirements of the residents. So, how would a military training school do that? So, when your saying what kind of category you’re going to put it in, you can’t put it in both. You’ve got to pick just one in a zoning ordinance and so the one that you pick, we contend that that is the one that should have been selected. Now as you know there are only three appellants, there are a lot of people here and I’m not going to call them as witnesses, but I would like and they do want you to know and how many support that appeal, so I’ll just ask them to raise their hands to let the Board know who is here in support of the appeal.

The majority of the audience in attendance raise their hands.

MRS. CURRIN: As far as Tab I goes, the first page of that is the first page of your Zoning Ordinance, which states specifically, “the interpretation of terms, methods or measurement and definition in this article shall be observed and applied when construing the ordinance unless there is a contrary intent.” Well, private schools, public schools; none of this is defined in your ordinance, so what you’ve got to do is decide when the Board of Commissioners drafted this what did they intend to be this kind of public, private, secondary, elementary school and what kind of uses did they intend to be in the business, commercial trade and vocational school? That’s your charge tonight, which kind of school is this, which category does it go in and did the drafters of this ordinance mean this type of facility to be in the A1 district? The ordinance also says that if there are conflicting provisions that the most restrictive will apply. The most restrictive of these two is the one for trade and vocational schools which is not allowed in this district. Under Section 303, which is a very key part of your interpretation question today, we would submit and talk specifically what the A1 district is about. It says that this district is intended to promote and protect agricultural lands including woodland within the county. The general intent of this district is to permit all agricultural uses to exist free from private development except for large lot single family development. So when this property was zoned A1, the commissioners were saying, this is supposed to be agricultural land but for single family. But they come back and they say some private and semi-public uses as well as some convenient commercial ones are permitted to ensure essential services to the residents. So those are the type of commercial uses that the drafter said was supposed to be in this district. If you look at the ordinances in light of that, you have to ask yourself, what type of school is one that is intended to provide essential services to the residents. The kind of school where you send your children. Apparently, what the drafters decided is that schools where people came to do things other than go to elementary or secondary or provide an education to these people who live in these single family homes, they didn’t want those kinds of uses. Expressly prohibited, as a matter of fact, is a school business or commercial for nurses or other medically oriented professions, trade, vocational and fine arts. So those aren’t allowed; those are uses they don’t want. Why not? Because they don’t serve the essential services of the residents. They have

adverse impact, they have secondary impacts, they're pulling people from outside into this district which they're trying to conserve for this purpose. When you look at this and you look at that, the question is what category do you put this in and we believe it's a very, very, straightforward answer. You have to ask yourself, why would the drafters of this ordinance say we don't want a nursing school, we don't want an auto mechanic school, we don't want a college, we don't want an art school, but it's okay to have a military training school where they're firing weapons on almost a thousand acres of land. It's illogical and we don't believe that's what was intended. When my clients first found out at the end of May that this had been classified as a school, as they testified, they were very surprised. They asked for some sort of explanation and basically what they were told is, it's not defined in the ordinance, we go to the dictionary and we look it up and we looked up private school and we were provided with a copy of something from Dictionary.com which said that a private school is basically any school that is not a public school and somebody pays to go to. Well, that may be true, but we have the more specific definition here and we'll get back to that in a minute. I would point you to another tab in your book which I would like to move into evidence which are also dictionary definitions, which are under Tab VI, which have come from Webster's New World Dictionary. The North Carolina General Statue Dictionary.com which is what the county has used to support their definition and also the American Heritage Dictionary. If you go and look at those definitions, you go past the private school definition and you say, what is a trade school, what is a vocational school? What it says is those types of schools which is expressly prohibited, are ones where they teach people how to do their occupation or their job or their trade. It is our position and we are going to argue to you that this categorization here is only for public and private, elementary or secondary schools. They did the same thing up here, (pointing to her display) they said this is a school and these are the types of schools we're talking about. They're entirely different and you can't put them both places. If you look at the definition and take notice of that, an elementary school is one that goes from K-6, a secondary school is a high school. If I could submit those as evidence at this time, I would like to do so.

CHAIR QUIGLEY: Admitted.

MRS. CURRIN: With that in mind, we'd like to talk about what is the TigerSwan Training Collaboration Center? What we have compiled here, which is at Tab IV, is information which was taken directly from their website. It's their information if you will and assert it's admissible as their statements and coming right from that party. There is also a newspapers article there which quotes TigerSwan and some other items. I would refer you to Tab IV and the very first thing behind Tab IV is a TigerSwan billboard and what it says is "TigerSwan – for those who have hunted armed men, training will never be the same." We would assert respectfully that the only people who can hunt armed men are police and soldiers. If this is a school that trains police and soldiers then they are a vocational trade business or commercial school and not a private elementary or secondary school. Their website goes on to talk about that it is a recognized leader in military and law enforcement training and I don't think they would say otherwise; Mr. Reese testified to that. That they have experience in planning, managing and obstructing complex training programs. They do have a current facility in Linden that they have stated on the record that they are moving to this facility where they train Ft. Bragg soldiers, local law enforcement officers and hunters. Their website says they have a contract with the military in the use of heavy weapons and urban warfare. They state that we challenge and train students of all levels which include highly skilled operations operators. This is not a private elementary or secondary school. Their courses are pistol and carbine courses. There is no reason to acquire these skills what-so-ever unless you were trying to be a better soldier or a better law enforcement officer and you're paying for it, so it is a business and commercial, vocational or trade school, not an elementary, private or public school. There

would be no reason to have two categories if you could always come to the A1 district and say I'm a private school; then you could do all of these things even though they're prohibited. The drafter said some schools are okay and some are not and this is how we're going to describe them. If this "private" encompasses every private school, then you might as well mark this out and say you can do all those here too because their private schools which obviously, if their business and commercial schools, their private schools, the government's not running them. That is really the only way you can look at it. We also have.....and if I would, I would like to move Exhibit IV, which is the TigerSwan evidence from their website into the record.

CHAIR QUIGLEY: Admitted.

MRS. CURRIN: I'd like to move to their site plan and again right now we're trying to present evidence to you as to what exactly is going on there. They said to the county when they submitted their site plan, what they were doing. That information is behind Tab III. That site plan, regardless of what anybody is telling you, if you look at that site plan, it says specifically that it is for this entire PIN. So if they say to you we're only going to have a shooting range on this particular area, that all fine, but if they want to, they can take their guns and their military training and run all the way up to Mr. Fort's property line and shoot those guns and there's not a thing the county can do about it because they have issued them site plan approval for this whole pin number. They have stamped on the site plan 978 acres approved for a training collaboration center. They are using this entire site for that purpose. If you look at what they say their doing, they submitted a site plan form, look right behind Tab III. They said, what is the use of the property; they didn't say it was a school, they said it was a fire arms training facility. What do you do there? You train people how to use firearms. You do not teach them elementary or high school courses. The site plan maps again are for 978 acres. There is a zoning permit which is also behind Tab III and it has been issued to this particular facility and that zoning permit says it is for a shooting range, TigerSwan trainers. Everybody knows what they're doing out there. We don't know somebody decided we really want them there so we're going to call them an elementary or secondary school for some reason or another, when obviously under no logical explanation could you do that. They are being honest, they are saying, we're out there teaching people to shoot guns. We're having a shooting range and training facility for soldiers and for military. But, we want to be called this even though the nurses and the auto mechanics and the art school – they can't come out here, but we want you to put us in this category instead. We would submit that these.....oh, I want to go back to the site plan. Again, it's got arms that they can use, small arms. They can shoot as we said, 3-4 miles. These are not the activities of a private school, elementary or secondary. It is not a commercial enterprise that is intended to service the residents of the A1 district. It is a school to train military and law enforcement personnel to perform their jobs of hunting armed men. It is not a permitted use and not contemplated by the drafters. We would ask that Tab III be admitted; it's the site plan, the zoning permit, the site plan application and some correspondence from the county that say's we've considered it a school.

CHAIR QUIGLEY: Admitted.

MRS. CURRIN: Thank you. Now what I'd like to do is turn to the law a little bit. At Tab VII, this isn't evidence, it is just, if you will, just a legal memorandum prepared by our law firm to help you understand what the courts will do if and when your decision meanders its way up to Superior Court and then to the Appellant Court. There are a lot of cases out there where decisions of zoning administrators and meanings of zoning ordinances have been appealed and there's a good body of law that looks at what the Board of Adjustment is supposed to do when

they are trying to decide what kind of school this is and what this zoning ordinance means. First of all, the Board does apply the same rules of construction that a court would use to construe a statute. There are some basic rules in there and some specific rules. The biggest rule across the board always is you must try to ascertain and effectuate the intent of the legislative body, which is what I talked about earlier, which is: the drafter said, we want uses, we want agricultural uses, we want residential uses, we don't want commercial uses, but you can have them, so long as they are serving the essential needs of the residents. That is the intent when you are looking to decide whether this is permitted or not, that you are trying to make it happen. Zoning ordinances are also to be given a fair and reasonable construction. You look at what they seek to obtain and you look at what the common use is of words, how you use them and how they fit into the ordinance. Again, if it's not specifically defined, you give it its plain and ordinary meaning. But what I think is an important rule of construction here is that the Board of Adjustment and there are cases actually cited in your brief, [we have copies if you want them, I can hand them up], but what the courts have said is Boards of Adjustment must avoid interpretation that create absurd and illogical results. They must avoid bizarre consequences because it is assumed that the legislative body acted with reason and common sense. So I would submit to you respectfully that when you're saying, what did they mean, did they mean you can have elementary schools and high schools; you can't have nursing schools, you can't have art schools, you can't have trade schools, you can't have any schools that teach people how they do their jobs, but you can have a military training facility and we would submit that that would be a non-sensible and absurd interpretation based on how this ordinance is written. There are some canons of construction that sort of address your earlier question. One of those is a Latin word which I don't even think I can say but it's written *o sequitur associate* and what that means in English is the meaning of a doubtful term may be ascertained by references to the words within it is associated. It also means that you must read it in context with the other words where it stands. Finally, when you look at a zoning ordinance, you can give it meaning only when you look at the modifying provisos. When you apply those things, you look and you say, okay, there's two kinds of schools here; they have words after them, how do you decide which school falls where? If you look at what the courts have said, they say you look at the words after it and decide what that means. Again, we would submit that the first school is described by the words after it which are business, commercial nurses, professions, trade, vocational and fine arts. This one are definitely public and private schools, but we already know that these private schools are prohibited, so the drafters didn't mean to allow all private schools because they've already knocked a bunch of them out. So you come back and you say, what could that mean? Well, under the rules of construction, you look at the other words, what's the context in which that is set out, specifically what it is, is elementary or secondary and then you go, okay, well why does that make sense? And then you go, okay what makes all the sense in the world because the A1 district is only allowed to have commercial uses that provide essential services to their residents and these do and these don't [pointing to her display]. It is our position that those words elementary and secondary describe those for the reasons that I've said. It would be an absurd or illogical result to allow this type and then kick all those other private school out. The next maxim of construction that I'd like to try to say, which is also a Latin word, but I'll skip to the English part of it, which is the expression of one thing is the exclusion of another. So when a specific thing is listed in a zoning ordinance, it is presumed that others are included. This comes from *Magnum vs. Board of Adjustment* which we've talked about all night, but this is a different *Mangum* that came later. Basically, by saying that public and private schools, elementary and secondary are permitted, the ordinance is also saying that other types of private schools are not because they are not enumerated. That makes sense as well for the reasons that I've said and I won't say over and over again, which is certain schools provide essential services and others do not. The next one is when two

provisions of the zoning ordinance apply to the same subject matter, their provisions must be reconciled. They can't both apply so you've got to decide which category am I going to put this in. If one is general, and this is assuming which we do not conceive, that this, maybe it is, all public schools in the second one, but if there is a more specific category that fits it better, then it is going to control over the more general one. The zoning ordinance says exactly the same thing. The more restrictive definition is always going to apply. Here again, two schools, which is more specific, which is more restrictive [pointing again to her display], public, just public or a public school that is business and commercial and is trade and vocation. This is more specific, what are they doing? When you read the definition of vocational and trade school at a business school they are training people to do their job, they are training them to do their occupations. You're bringing people in from Ft. Bragg, teaching them to be a better soldier, what is their job, their getting paid, their supporting their family by being a soldier. With police officers, it's the same thing; that is what they are doing. They are in that more specific definition and we believe that the commissioners, that is what they intended. There are some cases that I want to talk about real quick, I don't want to get too much into the law. But, there are no cases in North Carolina that specifically address schools and zoning ordinances. There are some in other jurisdictions, which I've provided that are right dead on point with this. First, I do want to talk a little bit about the North Carolina cases and where they've looked at certain terms and found they didn't fall in a category because it didn't make sense and it didn't just fit right and they applied these same maxims of construction that I've talked about. The first one is Hayes vs. Fowler where the Catholic Church owned a historic home near the church that it used for parish house. I'm embarrassed to say that I actually represented Pinehurst in the same case. What happened was the church said, we can have this parish house down the street because we own it and we want to call it a church, but they weren't having church activities there, they were having choir practice, weddings and renting it out and the court said no, that's not a church, you may want to call it a church, but it's not and if we do, it will produce an absurd result. We would submit that this is very similar to this. You can say, oh, this is a private or elementary school or it's a private school, but really when you look at it and you do the smell test, it's just not, it's like the church, it's not and will produce an absurd result. Another case is Moore vs. City of Kinston – which there is a question, is a flea market a store or a shop? The court said, no. Common sense in understanding if a flea market is not a store or shop. It's some different, you go out, you put it on the side of the street, you sell used things, it's not the same thing, so we are not going to classify this even though you could really stick it in there if you wanted to; that's not what was meant. The last one is Ball vs. Randolph County – which I do think it's different, but very similar here where the land owner wanted to do soil remediation. They said this is agriculture and we want to do it because it's an agriculture district. The court said no, this is not an agricultural use like other ones in the district. It may be related, but these people in agricultural districts, they have an expectation of certain things which is farming and people living there and once you bump it up to have this intense use like soil remediation, that's just not what's supposed to be there. That's the same thing here, you might be able to shove it in the definition, but it's just not what supposed to be there and it's not just what the ordinance allows. The last cases are actually from different states, but they jumped out at me and I thought you needed to hear about them because they're so similar. One of those cases had an ordinance and I quote "schools, elementary, high and private." Now, a college came in which was private and they said, we're a private school, we should be able to be here. The ordinances allow schools elementary, high and private, but the court said no. They said what we are arguing to you here today, and this is from Florida, is that once you enumerated out, elementary, high and that after the word, then that's all you could have. Just because it says private, doesn't means you get all private. All you get is elementary and secondary because that's what was being described. That case applied the same rules of construction that I've cited to you tonight. The next one is the Clark vs. Planning Commission

of Connecticut. Again, they had an ordinance which allowed specifically private schools and the land owner came in and said I want to put in a correspondence school. The court said no, even though it was private and even though it provided instruction; they said the legislative body intended something and I quote "radically different." Specifically, when we said a private school, we meant one operated by governmental entities that provide the same services to children as other ones. The last one is a New York case where the ordinance prevented all commercial development in residential districts except for private schools. So, a private writing school comes in and asks for permission and they say no. That's not what we're talking about when we're talking about private schools that serve children. We don't mean that you can come in here and ride horses and shoot guns and have colleges and have correspondence courses; that's just not the point. So to summarize, again the zoning ordinance has two land uses called schools, one is private, public, elementary and secondary and the other is business, commercial trade and vocational. The district is A1, commercial uses other than those with essential services are prohibited. It's for agricultural and single family residents. Elementary and secondary are permitted, trade and vocational are not; which is TigerSwan? We would submit to you, if you look at what they are doing, clearly they fall in that more specific and they are not an elementary or secondary school. The last point I want to make and there have been an objection to this exhibit, but I do want to go through it very quickly, just because.... I'll just go through the whole all the exhibits to make sure I didn't leave any holes at the end. What exhibit A is, we made a public records request to the county asking for all of their records because we knew that they have an existing TigerSwan Training Facility in Linden. We wanted to know how do you treat them, what do you call them, do you call them a private school? We got these documents, which were provided, these are all county documents, coming directly out of the county, which we would submit are admissible as public record. They didn't classify this as a public school, as a matter of fact the county said it was a prohibited use, it was not allowed in the county. The very same facility that they are operating now on a different site, the county has said, oh, that's a shooting range, you can't have that in this county. They have allowed them to continue it because behind Tab VIII on the second page, on June 24, 2010, they had a determination of nonconforming status for the property. In other words, what they said is we agree that your use was in existence before the zoning ordinance became into affect. So, the old TigerSwan Facility is not permitted as a school in the A1 district, but the new one is. We would just have to submit that there is some relevance to that because the same place has been called prohibited by the same people. There is more from the TigerSwan.....I had quoted to you from their website or their statements before where they specifically stated we're moving our Linden site to this new site. Also behind the Tab VIII is the current tactical training center for TigerSwan which is directly off of their website. Pistol and Carbine, Linden; Introductory Pistol, Linden; Tactical Carbine, Linden; so right now what they're doing in Linden is what they want to do on this property, but the Planning Dept. has said, that's not permitted. Again, that just has to make you think or have questions about what is the reasonable interpretation and could even they change their mind? In sum, we would really ask that you look carefully and at this use and where these people live and what they expected and what the zoning ordinance does to protect them against uses that are going to come in and cause damages to their property and commercial uses that are going to come and not provide essential services and bring things into this agricultural district, not provide essential services from the residents, but bringing in bus loads of soldiers from Ft. Bragg. It's just not what was allowed and we would ask that the decision be reversed. If you have any questions for me, that would be great, but I did want to real quickly go through the exhibits; No. 1 is of course the ordinance, No. 2 is the map and I believe you've already admitted that, No. 3 with the site plan was admitted, TigerSwan was admitted, the affidavits, the definitions, I guess I would move to admit the information about the

Linden site for purposes of showing that the same facility at a different location has been deemed to be prohibited under the zoning ordinance.

CHAIR QUIGLEY: It's admitted.

MRS. CURRIN: Okay, if you have any questions to me, I'm available. Otherwise, I think we would rest on these exhibits, my oral argument and legal memorandum and the testimony of the appellants.

CHAIR QUIGLEY: Thank you. I remind you that your subject to be recalled.

CHAIR QUIGLEY: Did you have a comment you wanted to make? [Addressing Mr. Reese and ask him to return to the podium]

MR. REESE: Can I object. I say again, Linden is not a TigerSwan range. I don't own it, it's used by lots of people. People keep claiming that is TigerSwan's range. That's not my range.

MRS. CURRIN: May I just respond that they list courses there on their public website which are in these documents.

MR. REESE: Sir, we rent space, just like all the hunters who come out there and shoot and we run our classes which has

CHAIR QUIGLEY: [To Mr. Raynor] Would you give us a quick lesson as to where we are here?

MR. RAYNOR: You would want to hear from the staff and then you all have to make an interpretation of what you've heard and that's to whether or not the staff had a basis for what your interpretation of what the appellants have asked you to interpret is was that school an appropriate designation interpretation of the ordinance.

CHAIR QUIGLEY: Okay, thank you, Mr. Raynor. Who from staff would like to make comments?

MR. LLOYD: I would like to start by asking a question to Mr. Reese, from TigerSwan, before I get started.

MR. LLOYD: Mr. Reese, when you explained to us the purpose of this school, who did you say were to be the users?

MR. REESE: We have a plethora of users. We do basic classes for women. We have a children's class. We do hunters and hunter's safety classes in schooling at our classes. We also do next level, what I would call law enforcement and we also do military also. So we have a plethora from basics to an advanced.

MR. LLOYD: So, when I wrote a zoning confirmation letter back to you, you used the term select groups, select organized groups, you intended to mean whom? Did you explain to me those groups you just named, correct?

MR. REESE: Yes sir.

MR. LLOYD. Thank you. Admittedly, this is a very difficult animal to classify. Obviously, and I'm not nearly as eloquent or well versed in this area as our attorneys that we've heard from. I can only tell you as one of the drafters of the ordinance as well as the rest of the staff, it was ratified in 2005. We know the intent of most of the ordinances that we reviewed. So the drafters are sitting in front of you. Admittedly, there's going to be uses that don't fit so snugly and the esteemed attorney told you what you do from there. I can only tell you how I, as the Zoning Administrator, arrived at classifying this as a private school. Number one, the users, we just heard, if this just going to be a military facility, just for military, just for law enforcement; if so, I would have classified it as a vocational school, because the definition and she was right, Mrs. Currin was right, we do use dictionary.com. For vocational schools, it read: a school offering instruction in one or more skilled or semi-skilled trades or occupations. Well, judging from who the users were, we saw what was being taught there as a skill in many instances as opposed to a trade or an occupation. So I did not classify it as a vocational school. Also, when you look at the matrix permitted use table put up there, the drafters of this ordinance back when it was done, I believe originally put in here in 1978, had what they talked about business and commercial for nurses or other medically oriented professions, trades, vocational and fine arts, FTCC, that's the school that we had in town that was classified a very large school, much larger than a high school, much larger than an elementary school.

MRS. CURRIN: Your honor, I object.

CHAIR QUIGLEY: Please...please...please, you'll have an opportunity to rebut.

MRS. CURRIN: I'd just like to register it for the record.

MR. LLOYD: Let me explain to you how I arrived at classifying this as a private school. We knew there was going to be training; we knew there was going to be classroom teaching, which put it into the school category to begin with. I'm not going to go into nearly as much presentation other than we saw this as teaching skills. Actually less than half of what was taught out there according to my correspondence with Mr. Reese, was to even take place outside. Which brings me, by the way; to the Linden facility, which is classified as outdoor entertainment. It was strictly a firing range, nothing was taught there, and there was no instruction. It was 45 acres used merely as a firing range. We classified that as outdoor entertainment. We classified this as a school, first of all, because it had classrooms and it had instruction. Secondly, it had instructions in skill, not necessarily in vocation. Yes, there are people that would go there, but they weren't getting any kind of a degree, they weren't working toward a trade. It wasn't a trade; as the definition of a vocational school read: Skilled or semi-skilled trades or occupations. Not everybody to use this school was going there to learn a trade or an occupation. They were going to learn a skill. Again, under the definition of trade you would see: Any occupation pursued as a business or livelihood. So clearly, the way it was explained to me, the way it was explained to you tonight, sure this is a school, but it's a school to teach skills, not to teach vocation just to the military or just to law enforcement, but the groups that Mr. Reese just named earlier. As a matter of fact, anybody at this point could actually go in there and use it, any group that was interested in learning about firing arms, defensive driving or anything else they offer in their curriculum. That's how I arrived at school, as far as public vs. private, it's interpreted that these comma's implied that these school, public, private, elementary or secondary; these stand on their own, they're not connected. You could have a public school, private, elementary or secondary, yes you have to use some common sense, and that's what brought me to the scale, the scale of the school. First of all, in what this

was, again in referring to schools, business for commercial for nurses or other medically oriented professions, I personally do know the intent of that and the intent of that was FTCC when this ordinance was originally done. That's where all these curriculum came from. That's all that taught the nursing curriculum at the time this was established was FTCC. You didn't have a nursing curriculum anywhere else in this town, so that was a vocational school, FTCC is a vocational school. Larger schools: a larger school that would generate a lot more traffic. So now we're going to look at the uses and the impact. The impact of the traffic, that's a major concern in agricultural areas. Sure there's going to be traffic generated by high schools and elementary schools, but not nearly as much as a large technical, essentially a junior college. I would like to add also that there's precedent for this in the past, there's a truck driving school in Eastover that was initially zoned, three years ago, A1. It's not a high school, it's not an elementary school, it actually could have been a vocational school, but yet they did teach driving. Not necessarily everybody there was a truck driver, that wasn't necessarily the vocation, so that was zoned A1 and during the initial zoning process you have public hearings where the public can come out and object and there was no objection to that classification at that time. I believe that was three years ago in 2007. So with that to summarize as to how I arrived at private school and I might say it is private and I did consider that. Totally funded by the people that operated it, which in general would make the scale of such a school, in my mind, smaller than what we had to work with and knowing the intent of the vocational school, business and commercial being the scale of FTCC. So scale played an important part, private in general is listed as a smaller type school. It definitely was a school with the classroom and who used it vocational vs. private. The users of that school, as you've heard tonight, aren't going to be people going there strictly to get a profession. That's how I arrived to it. Patti, did you need to add something?

CHAIR QUIGLEY: Thank you.

MS. SPEICHER: I just need to correct something concerning the Linden site. I didn't brief Mr. Lloyd on this and he didn't mean to misspeak, but it's my fault. Mr. Lloyd was out of town during the time that the final decision was made on the Linden site, and at that time we reviewed the older aerial photos, receipts, affidavits and a lease agreement from the current property owner, Mrs. Kirkpatrick. We determined that to be legal nonconforming, existing prior to zoning. That area was not zoned until 2001 and the site was there least in 1994.

MRS. CURRIN: Yes, just some follow up and I'll be done. Mr. Lloyd has testified about a couple of things and I was just objecting and I'll come up and say my point now. He is not the drafter of the ordinance. He is the commissioners or the people who vote on that. He might have presented something to them and said this is what I think you ought to do. But, at the end of the day, they vote on it and he can't testify to you as to what they meant. You've got to read it and decide what you believe based on the cannons of construction it means. What that says is very specific, it doesn't say, we can have anyone who's learning a skill in the A1 district, what it says is that you may have a limited list of convenient commercial uses which are permitted to ensure essential services to the resident. This just doesn't do that and neither does a truck driving school so maybe it's not permitted either and nobody's complained about it. As far as what he made his decision on, what he's told you is he had a conversation with them and they told him they were going to do this and that. This behind Tab III is a letter saying : Dear Patti, to Ms. Speicher, Attached is information for the site plan submittal for the referenced project. That's what we're talking about, this site plan, and this is the quote, I will read it to you, "This facility is to be a training and classroom center for military and police personnel." That's all it says. Maybe there bringing hunters in there and people and other kind of people that aren't

doing that, I don't know, that's not what they put on their application. Even so, I would ask you that if you do find that there are some other users there, that's fine, but to the extent they are out there training people for their occupation, that aspect is not permitted and you should rule that they cannot do that. Finally, regardless of whether you can put it in this vocational definition, which we think that you can, there is just in our opinion no way it goes in this one. This is very specific; this is of course the kind of school you want in a place. This is an essential service sending your kids to school and that's what the kind of school that belongs here and not anything else.

CHAIR QUIGLEY: Mrs. Currin, we have a question.

MR. HUMPHREY: Under your interpretation, I heard you earlier speak about the state of Florida, but I'm going to keep it to North Carolina, Cumberland County where we are. Would in your interpretation, a college or university be allowed under this zoning plan.

MRS. CURRIN: Well, that's not in front of me now and I cannot say for sure, but I will tell you under my interpretation, there's certainly is an argument that it may not be. It's not an elementary or secondary school and frankly colleges do not pull from the community in the A1 district, they pull from all sorts of people all over the state and other states and that kind of thing, so that is not this kind of thing. There may be another category in there for colleges, I don't know. I'm just saying this one right here, that's not a college. This is for people in A1 who are sending their kids to school and they don't want commercial uses but they have said that there are certain ones that we need to have and if you look at the list there are some other ones too, like churches and community centers and of all things that people use on a day to day basis. Those are the kind of things that are commercial uses that they say are okay and I'm not here to say college or not, but I would not think it fell in that because it's really not part of what's intended nor does it logically follow the definition.

MR. HUMPHREY: Thank you. So, is it definitive, yes, no?

MRS. CURRIN: I would say it's not part of that definition. I would argue it wasn't, but because it's not elementary, it's not secondary and it's not.....

CHAIR QUIGLEY: We're going to stand in recess for a moment.

MR. LLOYD: Just a few statements, one with respect to the type of users. The official zoning letter, it's in the record, that I referred to earlier, does state that it is intended to serve the military, law enforcement and other select organized groups of individuals. I wrote that letter to Mr. Reese in the capacity of as Section 106 says: This ordinance shall be administered and enforced by the County's Planning and Inspections Director. Their representative shall have the right to enter upon the premise in any manner of so and so. I've been charged by the Commissioners to interpret this ordinance in my capacity or my designee. Based on that and what I've been told by Mr. Reese and what you've been told tonight, one of the main keys was, other select organized groups of individuals, so I think that's very important in my classification. Also, I've worked here 24 years and pretty much know the intent of the drafters of the ordinance because most of the ordinance which is in existence, I worked on in draft. Again, it's not all inclusive of uses, but I started out by saying this is a strange animal. Just like there is in college or university in here, but that doesn't mean you can't have a college or university in this town. You would still have to look at where you would put it, you would still have to go through several stages. This is a privately owned school, it serves select individuals "as well as" the military and as well as law enforcement. It's privately funded, it's on a

smaller scale to my knowledge of a vocational school which was the intent of the first category business, commercial, etc. I agree with the intent listed of the agricultural district in this document you've been given, Section 303, which states, as the attorney stated: Some public and/or semi-public uses as well as a limited list of convenience commercial uses, not "such as", but as well as, in other words, yes, there's convenient commercial uses and agricultural, but there is also public and semi-public uses. That's how I arrived at this being a private school.

CHAIR QUIGLEY: Thank you. I think we've received all of the testimony that we need. We'll stand in recess for just a moment.

MR. RAYNOR: Just that none of these words are defined within the ordinance. The ordinance says: Words not otherwise defined shall be construed and given their customary and ordinary meaning. You can consider the evidence that you've heard from the various parties, you can consider your own knowledge of what is the customary and ordinary meaning of these words: school, private, elementary, secondary, public, vocational, trade. You have to make a decision as to whether the interpretation given by the Planning Director was a correct interpretation or not.

CHAIR QUIGLEY: Does everybody understand? [talking to Board members]

The Board members all answer yes.

CHAIR QUIGLEY: What we need is a decision to either reverse his action or to affirm his action. Is there any discussion?

MR. HUMPHREY: The matter of sound came up several times, the loudness and I was wondering about sound control, could we limit the night time sound or anything like that? They were talking about helicopters at night, with the large sound.

CHAIR QUIGLEY: This is discussion which hasn't happened yet.

MR. HUMPHREY: That was the only thing that kind of stood out in my mind and if there was some kind of way that could be confined to day light hours or something like that.

CHAIR QUIGLEY: Mrs. Tart, do you have any comment. We're looking to affirm the decision by the County Planning or do we reverse the decision by County Planning?

MRS. TART: I'm thinking about it.

CHAIR QUIGLEY: Ms. Autry, your turn.

MS. AUTRY: To me, the Planning Board and the folks that serve on it are far more skilled and trained and knowledgeable that I am. It's because of experience and knowledge of the law in the ordinances.

CHAIR QUIGLEY: Mr. Dykes?

MR. DYKES: Based on the evidence and the statements that has been presented, I think the decision should be reversed.

CHAIR QUIGLEY: Mrs. Tart?

MRS. TART: Based upon the interpretation of the land uses as presented and the wording therein, I believe that we would have to reverse the decision.

CHAIR QUIGLEY: I'll accept a motion.

MR. HUMPHREY: Before we go to a motion, I'm looking at a letter here, dated Aug 8, 2007, from the land use zoning, were they affirming that these people have the right to go ahead and proceed?

CHAIR QUIGLEY: Yes.

MR. HUMPHREY: And they did that, I'm assuming, with good intent, and with the understanding that yes, we got this, so I think they are at a much disadvantage that coming in now and saying, No, you can't do that, when you have a letter here saying go ahead, get started. We don't need any special.....the exact wording was "There is no requirement for a site plan review of plan , etc. In other words you got a get out jail ticket to go ahead and do this.

CHAIR QUIGLEY: Which was the reason for the appeal.

MR. HUMPHREY: Right. Okay, so in looking at the people, and if it were me and I've spent this money and stuff to get, based on what you told me I could do.....I would proceed.

MRS. TART: Mr. Chairman, would it be appropriate for me to ask council a question?

CHAIR QUIGLEY: Direct you question to Mr. Raynor.

MRS. TART: If this decision is reversed, this is not the end of the road for this business, is it?

MR. RAYNOR: I don't know, it may be other avenues they can do, they certainly can appeal this decision to the Superior Court. Either party can appeal, whatever decision is made, to the Superior Court.

MRS. TART: Mr. Chairman, I move that we reverse the decision of the Planning Staff in relation to Case P10-12-C.

MR. DYKES: Second.

CHAIR QUIGLEY: It's been properly moved and seconded. Is there any further discussion on this motion. All in favor of reversing this decision, signify by say yes and raising your right hand. Anybody opposed, signify by raising your right hand and saying no.

IN FAVOR:
TART
DYKES
QUIGLEY

OPPOSED:
HUMPHREY
AUTRY

MR. RAYNOR: There's no action on it. The motion fails and it is affirmed that the decision of the Planning Board is not reversed.

CHAIR QUIGLEY: Thank you for clarifying. The motion failed and the Planning Board has affirmation of the action they took.

CHAIR QUIGLEY: Thank you very much.

9. DISCUSSION

There was no discussion.

10. UPDATE(S)

MS. SPEICHER: The County Commissioner's did appoint Mr. Donaldson as the new alternate.

11. ADJOURNMENT

CHAIR QUIGLEY: I'll ask for a motion for adjournment.

MRS. TART: Motion to adjourn

MR. DYKES: Seconded.

There being no further business; the meeting adjourned at 10:30 pm.

DRAFT

P10-13-C
SITE PROFILE

P10-13-C CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A COMMUNITY CENTER IN AN RR RURAL RESIDENTIAL DISTRICT ON .95+/- ACRES, LOCATED AT 7108 ORA COURT, SUBMITTED BY LEON REVELS JR. ON BEHALF OF LUMBEE TRIBE OF NORTH CAROLINA (OWNER).

Site Information:

Frontage & Location: 105.9'+/- on Beaver Dam Road; 280.4'+/- on Ora Court

Depth: 154.1'+/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, 2 tracts on the north side and 1 tract on the east side of subject property

Current Use: Vacant land

Initial Zoning: RR – September 3, 1996 (Area 21); subdivision Case No. 06-140 approved 08/24/2006

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: A1, R40A & RR; West: A1; East & South: A1 & RR

Surrounding Land Use: Residential (including manufactured homes) farmland and woodlands

Stedman Area Detailed Land Use Plan: Farmland

2030 Land Use Plan: Community Growth Area

Special Flood Hazard Area (SFHA): None

Soil Limitations: None

Water/Sewer Availability: Well/Septic

School Capacity/Enrolled: Stedman Primary: 200/187; Stedman Elementary: 300/303; Mac Williams: 1270/1202; Cape Fear: 1425/1557

Subdivision/Site Plan: See attached “Ordinance Related Conditions”, particular attention should be paid to Condition No. 1 & 6

Average Daily Traffic Count (2006): 1,200 on SR 2027 (Beaver Dam Road)

Highway Plan: There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

Municipal Influence Area: Town of Stedman

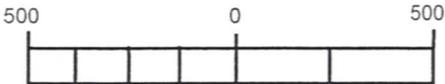
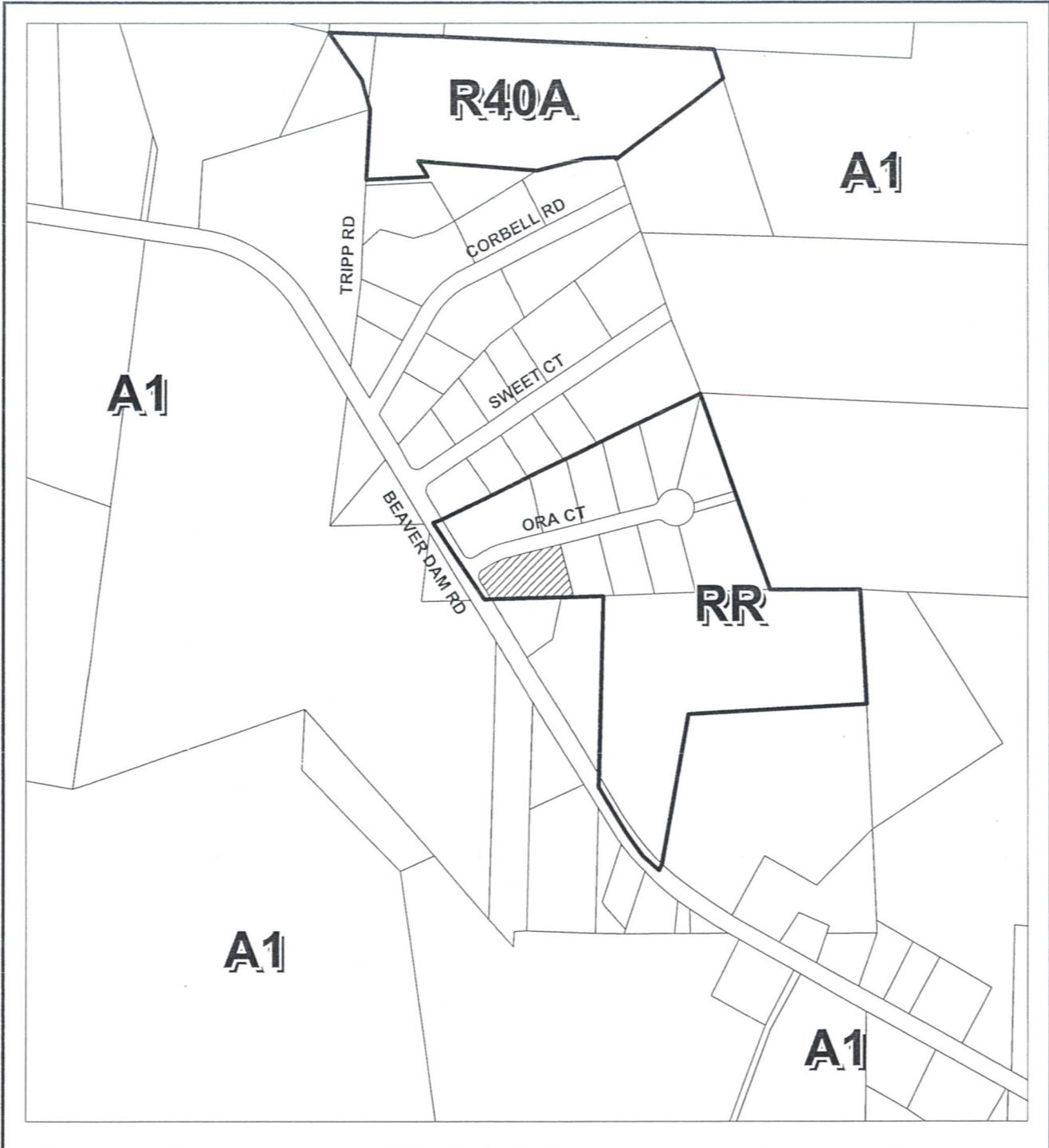
County Zoning Ordinance Reference: Section 916. Non-Residential Use as a Permitted Use in a Residential or Agricultural District (and not otherwise listed within this article)

Notes:

1. Contents of the application:
 - a. Community center for elder groups to meet for social and cultural events
 - b. Approximate capacity: 50 participants
 - c. Employees: 1 part time
 - d. Proposed off-street parking spaces: 13 (9'x20')
 - e. Days & Hours of operation: Monday-Saturday 8:00 am to 10:00 pm, and Sunday 1:00 pm to 9:00 pm
 - f. Proposed sign on the property (see site plan)

First Class and Record Owners' Mailed Notice Certification

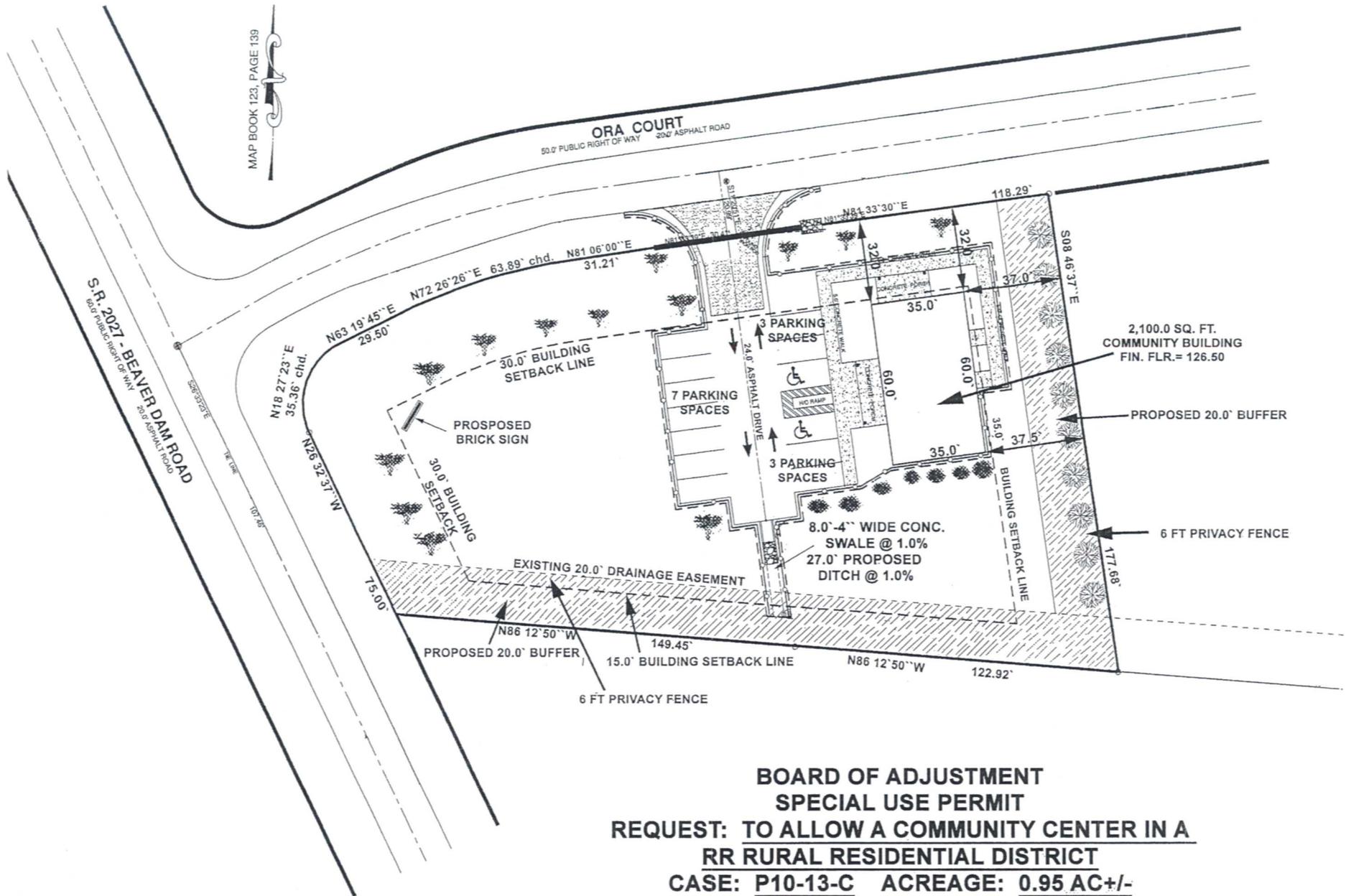
A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



SCALE IN FEET

BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 0.95 AC.+/-	HEARING NO: P10-13-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		



**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: TO ALLOW A COMMUNITY CENTER IN A
RR RURAL RESIDENTIAL DISTRICT
CASE: P10-13-C ACREAGE: 0.95 AC+/-
ZONED: RR SCALE: NTS
PARKING: 13 SPACES**

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 7108 Ora Ct

OWNER: Lumbee Tribe of NC

ADDRESS: PO Box 2709 Pembroke, NC ZIP CODE: 28372

TELEPHONE: HOME 910-522-2223 WORK _____

AGENT: Leon Revels Jr.

ADDRESS: PO Box 2709 Pembroke, NC 28372

TELEPHONE: HOME 910-522-2223 WORK _____

APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT
As required by the Zoning Ordinance or Code

Correction
Authorized
for application
put 8/16/10

A. Parcel Identification Number (PIN #) of subject property: 0495-53-8112 Lot #11
(also known as Tax ID Number or Property Tax ID)

B. Acreage: .95 Frontage: 322.65 ft. Depth: 135.00 +/-

C. Water Provider: Private Well

D. Septage Provider: Private Sewer

E. Deed Book 8230, Page(s) 8/2, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Residential

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) Community building to be used for Elders groups to meet for various social and cultural events. These events will have approximately 50 participants. Hours of operation are 8:00 am - 10pm Monday-Saturday and 1:00pm - 9:00pm on Sunday. This building will have 1 part-time employee. There will be one sign on the property. The address will be 7108 Ora Court, Stedman.

STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case.
- If the Board's decision is to deny the matter before them, **the aggrieved party shall file a "Notice to Intent to Appeal" with the Planning & Inspections Staff on the next business day following the meeting in which the Board's decision was made final, or the next business day following receipt of the written copy there of.**
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the Board is made final.

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) Leon Revels Jr. (Lumbee Tribe of NC)

PRINTED NAME OF OWNER(S) Leon Revels Jr.

DATE 10/25/09

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Pre-Permit Related:

1. Three copies of a revised site plan must be submitted for staff review and approval; the revised plan must satisfy the following:
 - a. The proposed building location complying with the required setbacks of C1(P) zoning district - 45' front yard from both streets, 15' side yard and 20' rear yard;
 - b. The off-street parking must be re-designed so that no portion of the parking area is located within 45' from the public streets;
 - c. If the developer wishes to located the freestanding sign closer to the public right-of-way, this must be shown on the revised plan – signs are measured from the right-of-way and do not have to be located within the buildable envelope.
 - d. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance. The following are the minimum standards for the required landscaping of this site:
 - (1) Two large shade trees or four small ornamental trees within the front yard setback area along SR 2027 (Beaver Dam Road);
 - (2) Six large shade trees or 12 small ornamental trees within the front yard setback area along Ora Court; and
 - (3) Two large shade trees and 19 shrubs are required in the building yard area.

In addition:

- (1) Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
- (2) All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.

Permit-Related:

2. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
3. The County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
4. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
5. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.

6. Prior to the building final inspection, in addition to the landscaping requirements shown above and because this development is located within the Stedman Municipal Influence Area, street trees are required to be provided at the rate of one tree per each 50 linear foot of street frontage, with the trees located a maximum of 50 feet apart. These trees must be located within in the center of an area a minimum of three foot in width from the back of the curb and/or right-of-way. The trees may be deciduous or evergreen variety that reaches a height of 30 feet at maturity and the trees to be planted are required to be a minimum 2" caliper at the time of planting. Call Jeff Barnhill for an inspection once the trees are planted.
7. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

8. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the RR zoning district must be complied with, as applicable.
9. All corner lots and lots fronting more than one street must provide front yard setbacks from each street.
10. Direct access to SR 2027 (Beaver Dam Road) is not permitted - see subdivision conditional approval, Case No. 06-140.
11. This conditional approval is not approval of the permit for the freestanding sign. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
13. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
14. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
15. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
16. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
17. A solid buffer must be provided and maintained along the side and rear property lines where this tract/site abuts residentially zoned properties in accordance with the provisions of Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing cannot be used to satisfy the buffer requirement.) (Note 2: The "20' Buffer Note" addressing buffer requirements as shown on the site plan are incorrect and are not consistent with the provisions of the County Zoning Ordinance; eight foot high solid fences are not permitted. The proposed 6' high privacy fence" as hand written on the proposed site plan is consistent with the ordinance.)
18. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
19. All required off-street parking spaces must be a minimum of 9' x 20' and surfaced, with a permanent material such as asphalt or concrete, and striped prior to application for the building final inspection. A minimum of 10 off-street parking spaces are required for this development.

20. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
21. Noise levels shall not exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level, regardless of the time of day, shall not become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.
22. All notes and calculations as shown on the site plan and contained within the application, unless otherwise addressed within these conditions, are to be considered as a part of this conditional approval.

Advisories:

23. The applicant is advised to consult an expert on wetlands before proceeding with any development.
24. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.
25. The developer(s) and any future lot owners are responsible for the maintenance and upkeep of Ora Court until such time the street is added to the State system by the NC Department of Transportation (NCDOT) for maintenance purposes. The developer is advised to give notice of the street status to any future lot owners in the event the lots are conveyed prior to the NCDOT's acceptance.

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Improvements Inspections (Street Trees):	Jeff Barnhill	678-7765
Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Daniel Ortiz	433-3680
Ground Water Issues:	Matt Rooney	678-7625
Town of Stedman:	Jennifer Kersh (Administrator)	323-1892
County Public Utilities:	Tom Cooney	678-7682
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
NCDOT (subdivision roads):	David Plummer	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545